

# CERTAIN OBSERVATIONS

Concerning the Office of the  
Lord Chancellor.

Composed by the Right  
Honorable, and most Learned,  
*Thomas Lord Ellesmere*, late  
Lord CHANCELLOR  
of ENGLAND.

Whereunto is annexed a perfect  
Table, and a Methodicall Analysis  
of the whole Treatise.



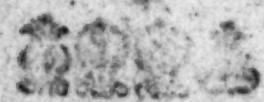
L O N D O N,  
Printed for *Matthew Walbanck*, at *Gray's*  
Inne Gate; for *Henry Twysford*, in *Vine*  
Court, Middle Temple, and *Iohn*  
*Place*, at *Furnivalls* Inne  
Gate 1651.

EXTRACT  
OBSERVATIONS

Concerning the Office of the  
Lord Chancellor

Composed by the Right  
Honorable and most Learned


The Lord Chief Justice of the  
Commons



L O N D O N  
Printed for Andrew Waller, at the  
Lane Gate; for Henry Tupper, in the  
Court, Middle Temple; and for  
James Smith, in the Strand.  
GRO 1671

TO THE  
READER!

Worthy Reader,

ome yeares past, the Copy of  
this Treatise was delivered  
unto me by John Harding,  
of Grayes Inne, Esquire, deceased,  
one of the Readers of that Honour-  
able Society, and by him then affirmed  
to be composed by the Right Honourable  
and most learned, Thomas Lord  
Esmeire, Lord Chancellor of Eng-  
land, of whose great and eminent abili-  
ties I dare not presume to speake, being  
unable and unworthy to be a judge of,  
but rather I am confident no man  
will be so hardy as to detract from the  
memory of so famous a Statesman.

\*

A

TO THE  
READER

My dear Reader,  
I have written this little book, the copy of  
which I have now presented to you, in the  
most simple and plain manner, without  
any of those pompous and affected  
expressions, which are so much in vogue  
among the writers of the present age.  
I have endeavoured to express myself  
in such a manner, as to be understood  
by all, without any of those metaphysical  
terms, which are so much in vogue  
among the philosophers of the present  
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understood by all, without any of those  
metaphysical terms, which are so much  
in vogue among the philosophers of the  
present age.

Perfect Table of the most notable  
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Summary or Analysis of the whole booke  
most methodically composed by the Author  
thereof.

\*\*\*\*\*

These

Chancellor, his ordinary Authority, when

it began

to be sold for *Mathew Waller* at  
 Inne Gate, for *Henry Tappin* in *St. Pauls*  
 Court, middle Temple, and *John Pate*  
 at *Farnivale Inne Gate*, 1. 6. 5. 1.  
*Perfect Conveyancer*,  
*Mirror Justice*,  
*Abridgment of Lord Cokes Reports*,  
*Abridgment of Lord Dyers Reports*,  
*Abridgment of Blounts Reports*,  
*Erkins Law: English*,  
*Actions Slander*,  
*Archers Reports*,  
*History of Normans both parts*,  
*Parsons Law*,  
*Privilege of Parliaments*,  
*Young Clerkes Guide*,  
*Hollins Justice of Peace*,  
*Pauls Progress*,  
*Attorney Common-pleas*,  
*Attorneys Academy*,  
*Terms of the Law*,  
*Fathers Legacy*,  
*Compleat Parson*,  
*Book of Oathes*,  
*Abbas Corpus*,  
*Parsons Lawyer*,  
*Liberty Subject*,  
*Wards and Liveries*,  
*Wilkinsons Sheriff*,  
*Derhams Manuel*.

*Amends for Ladies,*  
*Bancrofts Epigrams,*  
*English Grammar,*

*Lees Caesar. Mr. Williams in Pauls Church*  
*yard sells them,*

*Thorps charge,*

*Edgars charge,*

*Books sold by W. Lee, M. Walbanc,*

*Pakeman, G. Redell.*

*Touchstone of common assurances, by William*  
*Shepherd, Esquire,*

*Fleta, corrected and enlarged by Io: Sedile*  
*Esquire.*

*Three Readings. One by Sir James Dyer,*  
*by Sir John Bregrave, one by Thomas Ro*  
*den, Esquire.*

*Books sold by John Place:*

*Transactions of the high Court of Chancery*  
*both by practice and precedent, with severall*  
*speciall orders in extraordinary cases, by W.*  
*Tothill, Esq; and revised by Sir Robert Ho*  
*born, late Bencher of Lincolns Inne.*

*Clarastella, with pious occasional Elegies,*  
*Epigrams and Satyres, by Robert Heath, Esq;*

*Vade mecum, being the substance of old Sta*  
*tutes, usefull for a Justice of Peace, by W.*  
*Young, Esquire*

*Certain*



# Certaine OBSERVATIONS concerning the Office of the Lord CHANCELLOR.

HAVING ENDEAVOURED (for duties sake) somewhat to consider the nature of this high Place & Dignity, for two causes, chiefly, I was much discouraged. For neither could I remember any man in this kinde of discourse to have bin employed; Neither any Iudge or Potentate with whom this Magistrate may be compared, and herein the more I searched, the more I found my selfe confounded.



IN THE Eighth Chapter of the 2 Sam. 8.  
Second of Samuel Jebosaphat 16.  
the Sonne of Abilud, the Chancellor among the Hebrewes, as the second of David his chiefe Officers, is termed Mazur;

in the Greeke, Ananinneston, by Tremelius and Junius translated (a Memoria or Monitor) by the Spaniard Chanciller, which is all one with

*Cancellarius* or a *Comentarijs* ; by the Italian *Seritor de le Cose Fatte*, in the *Duch Cantz* in the French *Chroniqueur*, and in our English Translation, a Recorder, In the first place is called *Serayah*, and he is called *Sopher*, which in the aforesaid Translations is termed *Scriba* or *Secretarius*, saying that the Italian doth name him *Cancellario*. Sebastian Munster conceiveth *Mazur* to be a *Comentarius*, and he was ordeined saith he, to be the principall Master to note such things as were worthy of remembrance, or as Solomon saith, his Office consisted in this point, to report the actions of old time unto the King, and *Sopher* was appointed to Record them ; Herewith agreeth ( for the signification of the words ) the twentieth of the same Booke of *Samuel*, and the fourth Chapter of the first of the Kings ; But whether the Lord Chancellor of *England* as now he is, may be properly termed *Sopher* or *Mazur* it may receive some needlesse question, howbeit it cannot be doubted but his Office doth participate of both their Functions, being by *William the Conquerour* appointed *Magister Collegij Scribebarum*, by the same King instituted in the third yeare of his Raigne, ( as writeth *Polydore* ) and likewise having had the keeping of the Rolls and Records as *Bracton* witnesseth, either at the same time that the Common place was erected, which was about the ninth yeare of *Henry the third*, or not long after. But something more neerer to our name of Chancellor, I finde the Hebrew word *Kinkhall*, in Greek *Kniliro*, and in Latine *Cancellus*, whereof cometh *Kankhill*, in Greek *Kniliro*, and in Latine *Cancellus*, and thereof not unproperly *Cancellarius*, as he sitteth *intra Cancellus legum* ( viz. ) & *Conscientia*, or otherwise a *Cancellarius*.

shall be afterwards touched. Notwithstanding  
 that I finde the word *Mazur* better avowed  
 than this latter, and I do not remember much  
 mention to be made of any great Officer among  
 the Grecians neere sounding to *Kniklum*, I will  
 content my selfe with the former name only of the  
*abricians*, without further consideration of his  
 authority in Jury, notwithstanding with this ob-  
 servation, that long time before this Monarchy  
 of the Hebrewes, a speciall privilege of Jurisdic-  
 tion in Difficult matters was reserved to *Moyser*  
 wherein he might demeanie his decrees according  
 to the Information of his good conscience, for  
 it may be understood if I be not deceived that  
 those cases he asked Counsell of God, who  
 gave him Warrant of his Authority, and there-  
 fore some have not feared to call him *Cancellarius*  
 : So was *Joseph* said to be *Pharaons* Chancel-  
 lor, and therefore his Successors the Chancellors  
 our dayes, are called *Patres Patria*, as he was  
*patriarcha*; and as the King only was in seate su-  
 preiour unto him, so is the Chancellor with us  
 this day, *Primus post Regem, & secundus in*  
*ordine* of any temporall Magistrate.

And surely if in *Greece* I should look for a meet  
 person and president to this purpose, I would  
 hope to finde him in the Common-wealth of the  
*Athenians*, where from the time of the first King  
*Crops* unto the (*Athenes Anno*) I dare be bold  
 to affirme, that little light would be given unto  
 any man much better conversant in the Greekish  
 histories than my selfe, and from the same time  
 unto the Tyranny of *Gysistratus*, from thence to  
 the renewed *Demoticy*, after the Domination of  
*Pericles*, I cannot single out any one Justicer of  
 the quality, unless I might allow that *Solon* was

therefore Chancellor for that he did moderate and temper the positive Laws of *Draco* by his discretion, as well in decreeing as in execution, the which liberty and power was after attributed to the *Nomothetae*, not those which did make lawes, but those that did allow or reforme the lawes already framed; But mee seemeth the chiefeft part of our Chancellors Office may be applyed to the Senate to whom the power was given of making decrees in the causes of private persons and the holding of dayly accidents, but so as that they did not oppose or contrary the lawes positive. And further we may say of him, that he hath *Jus consultandi* with their Demarches, *Jus judicandi* between Citizen and Citizen, with Action between Citizen and Alien with their *Polymarchus*, whom the Masters of the Rolls, and the Masters of the Chancery are *Parodri* to informe him of the law, as shall more easily be gathered in the processe of this Treary, and that he hath *jus imperandi* and *Principatio judicior.* with the *Arpagita*; and further that he may *multum irrogare* with the aforesaid *Thesmothetae*, whereof it followeth that he is undoubtedly a most absolute Magistrate, and for that he hath closed in his office a credit for conservation of the peace over all the Realm, with shall not be amiss to call him *Nomophilax* with this remembrance that *Plutarch* writeth, *Eutimenes Cardianus* to be *Archigrammatea Alexandri magni* *Valgo Cancellarium ac principem Scribarum quilogotheta in regno & petitiones decretabat quos signabit & in eis se suseridebat.*

In the policy of the Roman Empire, I meet not with one example, saving that by report of *Dionysius* the best and worthiest of the hundreth Senators was chosen by *Romulus*, to whom oversight

Justice, the appeasing of Tumults, and the  
 conservatio of peace in the City, was appointed at  
 such times as the K. was otherwise busied in the ex-  
 ecution of warfare, not unlike to the Ordinance  
 of *Edw. the 3.* who in the twentieth yeare of his  
 reigne addressing himselfe to his warres upon the  
 French, did then authorize the Chancellor and  
 the Treasurer of *England*, to hear and determine  
 of all complaints against extortion of Officers  
 maintenance, imbracery, and such like offences, by  
 which authority he procured to be confirmed unto  
 them by Act of Parliament, and so it is at this day.  
 The Chancellor of *France*, *Vicarius Regis* and as  
 will appear hereafter; and that there was no other  
 Magistrates in the time of the *Romane* Kings is ex-  
 pressed by the same *Dionysius* excepting onely *Tri-*  
*umviri Celerum*, which was *Militaris*, and as some  
 hold opinion, certain *Quæstores* for oversight o  
 the Treasury, sent but otherwise in *Rome omnia*  
*Regum Arbitrio administrata sunt*; in imitation  
 whereof, the two great Officers of *France*, which  
 are preferred before all other, *Et semper adsunt ad*  
*latus principis*, are the Constable of the Kingdom  
 and the Chancellor, which is called *Quæstor* by  
 some writers. Now in the permanent and ordi-  
 nary offices of their popular government, what  
 Magistrate might be so mighty or generall in his  
 jurisdiction, as is the present preheminance of the  
 Chancellor? I speake not of the Consuls or Di-  
 ctators, which did want nothing at all but the ri-  
 ght and the denomination onely of Kings and  
 chief Rulers. *Herbert Budeus* doth not sticke to  
 call him *Præfectum prætorio*, and further (*qui loco*  
*Dictatoris fit*) that our Chancellor hath *Jus edi-*  
*tandi*, appears by his rules and orders for matters  
 of Conscience in the Chancery, which doe espe-

cially concerne his absolute Authority, *Jus judicandi* upon *Audita querelaes*, Petitions *de droit*, &c. where he judgeth according to form of Common Law, *jus cogendi*, by his service of the Mace, and *jus coercendi*, for over all the Realm he hath authority to command a man to Prison: How he might be termed *Censor*, in that he sendeth for the Commissioners for survey of Armour, &c. *Ediles* in the prizing of Wines and Fish, &c. in the appointing of Sewers, &c. And so to compare him with the severall Officers of that Commonwealth, by reason of his severall qualities it were both tedious and impertinent, only I have thought convenient to term him *Pretor* for these congruities: First *quoad cognitionem*, then *quoad curatorem*. The Cognizance of the *Pretor* was either Domesticall or Popular, Domesticall whereby he might hear the Complaints of every private man within his Palace and in his owne Chamber, *Ministrante atque admittente Cubiculario*, and order them by the Law of his Reason, the which orders were ingrossed by any one of his Clerks and sealed with his owne signet; Popular when he sat in *Basilica* or in *Fore*, where he was *Circumdatus Cancellis*, and had attendant upon him, Scribes, Cryers of the Court, and Serjeants, and this was called *Locus statuendi*, in whose constitutions there were two kinds, one of decreeing, another of giving judgement. He was said to decree when without the Counsell or advise of the Judge he would manumiss, emancipate, award possessions of lands and goods, commit wardship of pupills, grant injunctions, and generally when without assistance of a Judge he did hold cognizance of causes and determine thereof as he thought convenient, and in this manner of Cognizance

some

*Pretor.*

Sometimes he would *statuere sine Iudice*, Sometime  
 would *Rem iudicibus Statuendum permittere*,  
 we may fitly translate to dismiss them to the  
 Common law. It was said the Judgment of the  
 Pretor either when he proceeded to Judgment ac-  
 cording to *leges Regis, duodecim tabulas, Jus Ci-*  
*uile, leges, plebiscita*, or *Senatus Consulta*, and  
 in his authority was not absolute as in the o-  
 ther, or where himselfe did heare and define, re-  
 serring the sentence of judgment to be pronounc'd  
 by the Judges, in this kinde our Chancellor and  
 the Pretor doe differ, especially for that the Pre-  
 tor would at his entry into that Office, publish  
 and propound certain Edicts, which were princi-  
 ples and fountaines out of the which he would  
 give his decrees. But what names or generall  
 notions the Lord Chancellor doth assigne unto  
 himselfe for limitation of equity and direction of  
 Conscience that lyeth hidden and concealed in  
 owne breast, for as saith *Lindwood, Conscien-*  
*tiæ Cognitione sui ipsius Cordis & Conscientiæ*  
*quæ quando quid relinquitur ipsemet erit ju-*  
*ris &c.* Whereby the man of Law is not able to  
 reforme his Clyent what is like to become of his  
 case, or whether it be determinable in the Court  
 of Chancery, or to be tryed at Common Law. But  
 give some understanding of such matters as are  
 proper to this Court, so farre forth as the abso-  
 lute power of the Chancellor extendeth, there shall  
 be set here under a competent store of cases where-  
 on reasonable conjecture may be grounded what  
 like to fall out in matters of many natures; But  
 his ordinary power of Judge, and of his Office  
 he is the Princes Minister, they shall not in  
 discourse be largely handled in particu-  
 lar but onely touched (*obiter*) in a word or two.

And thus much of Rome, calling to mind by way that Tribonianus to Justinian, Seneca to Nero, and Ulpian to Alexander the Pope, are reported to have bin Chancellor.

The Chan-  
cellor of  
France.

And now in the meane time let us in short ha regard to the Chancellor of France, and to the great Chancery of that Kingdome which comes nearest to our selves, and would be much resemblance of the form & force of our English Chancery, had not the Court of Requests bin ennobled by Commission from K. H. the 8. before whose time the Masters of Requests had no warrant of ordinary Jurisdiction.

We are to give credit unto the Historyes of France, which doe report the first Chancellor of that Kingdome to be ordeined by Charles the Great, and that his authority was enlarged by Charles the wise the sixth of that name. It may be gathered out of these words of Divus Lucius which I doe therefore report in Latine as he writes them, for that they be significant, *Constitutionem Caroli quinti Supremus omnium ordinum & legum Cancellarius (qui que subinde Regi a consilij intimis starent, exhibitis tactisque sanctis Evangelij in manu Regia in hac verba jurabatur quod scilicet et nullum fœdus nec ullum conspiciationem ini-ent inter eos & si quida quoquam contra fieret a statu suo dejectus exauthoraretur.*

*Per insignem dignumq; Majestatis regia hunc ferre libuit modum quem Carolus ille quintus eo nomine sapiens in eligendo & designando supremo illo Nomophylice Cancellarie non minus cite quam sancte observavit, cum ad centum & triginta essent patres conscripti octo juri a libellis Præter ceterisq; rationales, eos a conclavi Rex abire*

ex

re jussit, postea sigillatim omnes ad unum des-  
cendunt, & Jure jurando adiecit, ut bona fide quem  
Republica hunc Nomophylacie putarent esse per-  
ciendum utriuslibet Status sacre aut Secularis  
minem profiterentur latis suffragiis Petrus  
Regis Montius Latinacensis Episcopus Centum  
inque puncta & tabulas tulit. Tum ille ut in-  
minus erat senioribus minimeque ambitiosus tan-  
ta hac munere (ne dicam oneri) sese longe imparem  
excusare. At vero Rex tot tantisque calculis ap-  
robatum sibi & jam valde probari testatus est sig-  
illaque Codicillaria ei in manus dando ab eo Jus-  
jurandum Sacrosancto per Evangelia excepit sub  
his conceptis verbis Tuo Juramento firmas Orge-  
menti Regi te obsequentissimum fore. That you  
shall give unto him faithfull advice and Counsell  
and such as shall be for his commodity and con-  
venient for his Majesty, as also for the profit of  
him and the Common-wealth : That you shall  
never put your self under the obedience of other  
than of Him, that you shall preserve to the utter-  
most of your power the revenue of the King and  
of the Crowne, that you shall never receive nor  
accept without his consent, any gowne, Cloake,  
Fee or wages, present or profit whatsoever of any  
other than of him; that for favour, affection or  
hatred, you shall do nothing, and if at this pre-  
sent you are bound by Oath to any Lord or La-  
dy, or have bin so heretofore, that you forsake  
and renounce it wholly.

Hereout may be collected the preheminnence,  
election, and duty of the Chancellor, if we adde  
hereunto the Words of Eudenes, That bodie ejus  
patres prima sunt videre ut nulla principis con-  
stitutio, nulla Sanctio, nullum diploma, nullum  
ascriptum, nulli Codicilli Regi non e Republica  
atque

atque etiam e dignitate Reipublice principalique  
 exeant cujus censura aut stilo principum Majestati  
 ab illis sua eximi volunt, denique qui principis prae-  
 sentis viarius peragere agente Intervex quod a moribus  
 esse censetur Jure & proprie Nomophilax legum  
 praesidium Juris Asylum id quod E Papinianum  
 quondam dictum est morum institutorum quae  
 equi bonique Columnen appellari potest atque etiam  
 debet id quae credere me cogit consensus fere homi-  
 num institutum quae quod eam quasi per manus tra-  
 ditum caput eum per verticem Justitiae appellan-  
 tum. And namely it is to be noted, that he might  
 be of either State, Ecclesiasticall or temporall, re-  
 ligious or secular, for the order of all the Chan-  
 cery Courts in France may be seen one Acte in  
 the time of Charles the 7th. another of Charles the  
 8th. and that the High Court of Chancery which  
 followeth the King at this day, was ordeined by  
 Lewis the 12th. may appeare by the Ordinance  
 of the same King, Anno 1498. as also by the acts  
 of Francis the First, Anno 1540. and of Charles  
 the 9th. Anno 1560.

There are two Seals belonging to the Chancery,  
 one is the great Seal wherewith are sealed letters of  
 grace, & the other called the Common Seal, lesser  
 than the former, wherewith are sealed the writs of  
 simple Justice, and so have I heard a motion to be  
 made for a like little Scale proper and peculiar for  
 the sealing of Writs originall in our Chancery,  
 all Letters Patents of the King, arrests and or-  
 dinances made and agreed in the Privy  
 Counsell, are sealed with the Scale of the King,  
 either by the Chancellor or Keeper of the  
 Scale in the great Chancery, which followeth  
 the Court, For in France they have a chief or  
 principall Chancery attendant upon the  
 King

in the which the Chancellor of France  
 exercise the office of Sealing, or else his  
 Commissarie assisted with the Kings Secre-  
 taries which of right have a certaine Fee out  
 of every Parent by them signed, and also  
 the Masters of Requests which have the so-  
 leight and admiment of all such Writs and  
 Warrants as are to be sealed, and moreover in e-  
 very Parliament of France there is by the King of  
 France established a Chancery, wherein is placed  
 a Keeper of the Seale, a certaine number of  
 Secretaries as in the former, which are said sub-  
 scripti in *sublevamen Cancellarij propter multi-  
 tudinem negotiorum in Cancellaria & Curia Regis  
 facientium*; and likewise as are in the Great  
 Chancery, there is one Audiercer, one Comptro-  
 ller, and one Referendary or Recorder, The  
 Chancellor if he doe exercise his Office, hath for  
 wages by the year eighteen thousand French li-  
 vers and having a Keeper of the Seale substituted  
 he received twelve thousand Livers, and six thou-  
 sand Livers are assigned unto him, principally for  
 the entertainment of the Masters of Requests,  
 which do ordinarily dyne at the Lord Chancelors  
 table in their turne of quarters, he hath also be-  
 sides his wages many other rights and duties, as at  
 the entry of Kings into Cities, he hath a garment  
 of cloth of Gold, and yearly he hath certain Elles  
 of Velvet, a certain number of lights, and an al-  
 lowance of Wax, the Chancellor ought not nor  
 may not passe any writing under Seale, contrary  
 to the deliberation and determination of the Pri-  
 vey Councell, neither whereof any doubt is mo-  
 ved by any Master of Requests of the household,  
 but he ought to send the same to the Councell for  
 resolution.

Of

Of those which have access to the Seal we place in order next to the Chancellor, the Masters of Requests, which are appointed him for surors and examiners of such writings as passe the Seale, especially of Patents and Commissions, and all other persons whatsoever are forbidden to enter at Sealing time, saving the Kings Secretaries, the Audiencers, the Comptroller, the Curator Generall, which is ordained in the Chancery, and the Chafewax.

By this appeareth the name, and some part of the Office of the Chancellor of *France*, to be given by *Charlemain*, more than one hundred years before the time of *Edward* the Confessor, in whose dayes began the name of our *English* Chancellor according to the assertion of *Florentius Wigornensis*, for that the aforesaid *Edward* having spent great part of his Age in *Normandy*, was the first that brought the use of the Seale from thence, and with it the name of him that had the charge thereof, and that is the Chancellor, in whose *Leafric* the Brittain is named the first Chancellor, But saving correction I must be of that opinion of the *Normans*, we did not learn our manner of sealing, not onely for that I have seen the Copies of our Kings Patents before those dayes, *Ego Iva, Ego Aluredus &c. subsignavi*, which indeed may be all one with *subscripsi*, according to the 40th. Law in the Digests lib 50. But surely I have either seen the very points of the *Saxon* or *Danish* Seale, or else they were counterfeited for profitable purpose.

Let other men give what credit they will to the collection of Chancellors by Mr. *Thinne* in his new addition to Mr. *Hollinsheds* Chronicle lately Published, For my owne part I am neither  
exper

science nor judgment to impugne it, But un-  
 der the authority of allowable writers, I shall set  
 it, and that shortly, what I have gathered in  
 these daies as I have therein bestowed, of the pre-  
 sent state of our Modern Chancellor, and herein  
 particulars of the Court of Chancery; and  
 in mine opinion he is the same Chancellor  
 was *Rembaldus* to holy *Edward*, and *Mau-*  
*rice* to *William* the Conquerour, whose office  
 was to make and seale the instruments that passed  
 under the Prince, as writeth *Lupanus*, and as for the  
 former mentioned Chancellors before this time,  
 they seem more kindly cheif Secretaries, than to  
 exercise the present Office of Chancellors.  
 howsoever I am induced probably to conje-  
 cture, that before *Edward* the Confessor there was  
 an Office of Sealing, as I have said; so have I no war-  
 rant to allege for a great Seale of the King to  
 seal the Instruments, whereof the charge was  
 committed to the Chancellors, the which, as I  
 think, may be reputed the originall of his office,  
 for this his originall office was not altered by the  
 said Conqueror in the erection of the College  
 of scribes or notaries, neither his name changed  
 conceive the words of *Polydore* where he  
 saith *Ejus Collegij Magistrum vocavit Cancel-*  
*lum qui paulatim supremus effectus magistra-*  
*tus of qualis hodie habetur.* But I suppose that  
 authority was also given him by sealing and ma-  
 king certain Writs originalls, the forme whereof  
 for the most part produced out of *Normandy*,  
 not the granting of all originalls, because that  
*Glanvill* it is affirmed that many of them did  
 are Teste of himself ( viz. ) *Ranulpho Garvil-*  
*lano* who was cheif Justice many yeares after; and  
 by the way is to be remembered, that in the  
 name

name of Chancellor our ancient Historians easily deceive us, for some were called (*Cancellarius Regis*) and others (*Cancellarius Regni*) and of the which had this great Seal of the K. in their charge and custody, Some were termed Chancellors and Scale bearers, also that had no partakers of the office, such a one was the same *Rembaldo* to the aforesaid *Edward*, and many others; Some were Keepers of the Great Seal, and that solely, (*Custodiam sigilli Regii acciperent Cancellarius affari & officium &c.* as saith *Mathew Paris*, *John Maunsell*, although there may be perceived some small difference betweene a Keeper of the great Seal and a Vice Chancellor, for of Vice Chancellors also I finde two sorts, the one (as I take it) exercising the Office of a Chancellor in matters of Justice, and such a one was *Matthias* in the time of *Richard* the First, another which was chiefe Secretary as it seemed unto the Chancellor, to write the Patent of the Prince, and such a one was *Symardus*, whose name I have subscribed to a Charter of *Edward* the Confessor, *Ego Symardus Notarius ad v. cem Rembaldi Regis Dignitatis Cancellarij scripsi.*

The first sole Keeper of the Great Seal, but to be *Symon* the Norman, who had the Seal delivered unto him in the 23d. year of the Reigne of King *Hen.* 3d. and shortly after also taken from him againe, when he was also banished the Country for that he would not scale the Patent, where *Thomas* Earl of *Flanders* might aske 4d. for every sack of *Wool* that went out of *England* to *Flanders*; But that the Authority of the sole Keeper was beforetime some way inferior to the Authority of the Chancellor, that may be

the Act of Parliament which was made *Anno 5*  
 & that did equall the power of the one with  
 other; sometimes also the Chaucellor of Eng.  
 had a Keeper of the Seale subscribed to him,  
 so was *Ranulphus* the Chaucellor, and *Rich.*  
 the Chaplaine keeper of the Great Seale, both  
 one instant to *Henry* the first. Sometime there  
 were two Keepers of the Great Seale and both at  
 once, as were *Jefferey le Templer*, and *Iohn de*  
*Winton*, notwithstanding that *Ralph Nevill* re-  
 mained Cancellor, of whom *infra*.

Sometime the great Seale was delivered unto 3  
 persons, as by *Edward* the 2d. to *Will: Melton* and  
 others, joyned with him for a certain time to  
 execute all such things as were to be done there-  
 in during the Kings pleasure.

The election or creation of Chancellors, and  
 keepers, &c. was of more than one sort, and  
 of Men of divers degrees and quali-

The Ele-  
 ction of  
 the Chan-  
 cellor.

Sometimes, and for the most part, the Chan-  
 cellor was elected by the King *Durante bene-pla-*  
*ce*, and put in power of his Office, by the Deli-  
 very of the Seale, and sometimes the Chaucellor  
 was made by Patent to hold that place or office  
 during his life, as *Walter Grey* Bishop of *Chester*,  
 the time of King *John* and others, some, and  
 for the most part were elected by the King onely,  
 some had Patents of the King and were confir-  
 med Chancellors by consent of the three Estates,  
 as were *Ralph Nevill* Bishop of *Chester* in the  
 time of King *Hen*: the third, with whom the  
 Seale being offended as reports *Matbew Paris*,  
 and demanding the Seale at his hands, he refu-  
 sed to yield the same unto him, affirming that as  
 he had received it by the common consent of the  
 Nobility,

Nobility, so he would not, without like Warrant  
 resigne the same. And in the dayes of the late  
 King, it was told him by all his Lords spirituall  
 and Temporall, that of ancient time, the election  
 and disposition of the chief Justice, Chancellor  
 and Treasurer, belonged to the Parliament, and  
 although the King in displeasure did take the same  
 from him, and delivered the same to the custody  
 of others; yet did the aforesaid Nevill remain  
 Chancellor notwithstanding, and received the  
 profits thereof, to whom the King would have  
 restored the Scale, but he refused to receive  
 it.

And hereupon may be gathered, that the Keeper  
 of the Scale is not Vice-chancellor in respect.

And let us note by the way three several Parts  
 were granted unto this Ralph Nevill aforesaid,  
 whereby he is ordained to be Chancellor, and  
 third for the custody of the Scale, and remain  
 among the Records in the Tower, in  
 verba.

Henricus Rex, &c. Archiepiscopis, Episcopis  
 &c. Sciatis nos dedisse, concessisse, & hac  
 nostra confirmasse Vene. Patri Randolpho  
 Cicestrensi Episcopo Cancellariam nostram  
 habend. & tenend. toto tempore vite sue,  
 cum omnibus pertinentiis & libertatibus  
 & liberis consuetudinibus ad prædictam Cancellariam nostram  
 beat bene & in pace libere & quiete, integre  
 & honorifice cum omnibus exitibus libertatibus &  
 alijs ad eam pertinentibus sicut Cancellarius  
 Regni Angli. prædecessor. nostror. ea melius quam  
 liberius & integrius habuere hijs Testibus &  
 tum per manum nostram 12. Febr. Anno  
 nostri II.

## His second Patent was of this Forme.

Henricus Dei gratia, &c. Archiepiscopis, Episcopis, &c. Sciatis nos concessisse et hac Charta confirmasse pro nobis, et hered. nostris venerabili patri Randolpho Cicerstrensi Episcopo Cancellario nostro Cancellariam Angliae toto tempore sue cum omnibus pertin. libertatibus & consuetudinibus ad predictam Cancellariam pertinen. quare volumus et firmit. precipimus pro et hered. nostris, quod predictus Episcopus et ipsam Cancellariam toto tempore vite sue cum omnibus pertinent. libertat. et liberis consuetudinibus ad predictam Cancellariam pertin. predictum est. Testibus &c. Datum per manum meam apud Westm. quarto die Maij Anno nostri decimo septimo.

is is the transcript of his third Patent  
the same day and yeare.

Henricus Dei gratia, &c. Archiepiscopis, &c. Sciatis nos concessisse et hac Charta nostra confirmasse venerabili patri Randolpho Cicerstrensi Episcopo Cancellario nostro custodiam Sigilli nostri toto tempore vite sue cum omnibus pertin. libertat. et consuetudinibus ad predictam custod. pertinent. Ita et sigillum illud Portat et custodiat in propria persona sua quamdiu voluerit vel per aliquem vium discretum sufficientem & idoneum assignat. qui quidem assignat nob. fidelitat. faciat de omni servicio & de sigillo nostro loco suo fideliter

B

custo-

custodiendo, aut quam custodiam predicti recipiat. Et si forte idem assignat. suus visor vel vitam suam mutaverit, vel ob causam ralem per nos vel per ipsum Cancellar. amotus erit, vel ipse assignat. sigillum illud ulterius tate noluerit, idem Cancellarius loco illius assignatum alium virum discretum sufficientem & idoneum substituat. Item quod fidelitatem faciat de fidei servitio suo & de predicto sigillo suo fideliter custodiend. antiqua Carstiaca predicti recipiat sicut predictum est, quare & firmiter precipimus quod predictum Cancellar. habeat custodiam, &c. hiis Testibus, Datum per manum nostrum apud Westm. die Maii Anno Regni nostri decimo septimo.

Sometimes the Chancellors of England were elected by the Nobility, as Nicholas of Ely made Chancellor by the Barons; But this seemed a usurpation by them, for they were afterwards the most of them most sharply chastised and the said Nicholas deprived by Hen. the 3. disdaining to have Officers of that estate appointed him by his Subjects.

Sometimes the Chancellors were created of the Nobility, as Richard Nevill Earle of Salisbury, in the time of Hen. the 6. Henry Schier Earle of Essex, in the time of Edw. the 4. the Lord Wrotesley, the Lord Rich, &c.

Sometimes they were enobled after their advancement to that Office, as Richard Scrope Knight, created Lord of Boulton, and Michael la Poole created Earle of Suffolk, in the time of Rich. the 2. Sometimes they were the Sons of Noblemen and Princes children, as Hen. Beauford, sonne of John of Gaunt, &c. in

Hen. Beauford.

of Hen. the 4. Sometimes of base and  
 base parentage, as *Wolsey* Cardinall, &c.

Sometimes Archbishops and Clerkes were or-  
 dained Chancellors, whereof the first Archbi-  
 shop was *Walter Hubert*, Archbishop of *Canter-*  
*bury*, in the time of King *John*, to whom a No-  
 rman said in scorne, That he had often seen a  
 Chancellor made a Bishop, but he never before  
 saw an Archbishop made a Chancellor, whereof is  
 to be noted, that many of the former Chancel-  
 lers were not Bishops when they were elected to  
 that Office, but afterwards promoted to their Bi-  
 shopricks, upon which promotions, many of  
 them did yeeld and surrender up their Authority

as Chancellors, and to this purpose maketh the  
 testimony of *Thomas Walsingham*, who writeth  
 that in the 3 year of Rich. the 2. in a Parlia-  
 ment holden at *London*.

*Dominus Richardus Scroope cessit officio Can-*  
*cellarie, &c. Archiep. Cantuar. Magister Simon*  
*Radbury contra gradum sue dignitat. ut plurimi*  
*clamabant, illi Officio militaturus accessit, sed*  
*ipse illum procuraverit aut sponte suscepit,*  
*non videtur.*

Sometimes were chosen to that place Archbi-  
 shops and Cardinalls, as *John Thoresby*, Archbi-  
 shop of *York* and Cardinall, &c. in the time of  
 Edw. the 3. &c.

Sometimes Treasurers of *England* were ad-  
 vanced to the honour of Chancellors, as *Henry de*  
*Murgh*, in the time of *Edw.* the 3. Sometimes to  
 the Office of the Keeper of the Great Seale, as  
*John de Chesshall*, in the time of *Henry* the 3. and  
 many other to either of the places

Sometimes common Lawyers were called to  
 be Chancellors, as *Robert Varnish* Justice, and

*Robert Thorpe Justice*, in the time of *Edward* the 3. *Sir Thomas Moore*, in the time of *Hen.* the 4. and others.

Sometimes were trusted with the Keeping and exercise of the Seale, as *John Maunsell L.* Chief Justice, in the time of *Edw.* the 3. &c.

Sometimes the Lord Keeper of the Privie Seale was made Lord Chancellor, as *Edmund Stafford*, in the time of *Henry* the 4. and others.

Sometimes were made Keepers of the Seale men cunning in the Custome of the Chancery, as was *Sylvester de Eversden*, in the time of *Hen.* 3.

Sometime men learned in the Civill and Common Lawes, as *William of Kilkenny*, in the time of the said King.

Sometimes the Master of the Rolls, as *Henry Cliffe*, in the time of *Edw.* 3. who was his Chancellor also, and others.

Sometimes a Keeper of the Wardrobe hath been appointed to keep the Seale, as *John Drakenford* to *Edw.* 1.

Some have been twice Lo. Chancellors, as *John Hotham*, in the time of *Rich.* 2.

Some thrice, as *John Stratford*, in the time of *Edward* 3.

And sometimes there have been three Chancellors in one year, as *Rotheham*, *Alcock*, and *Moreton*, in the 1. yeare of *Htn.* 7. and he that hath been the longest in office, either of Chancellor or Keeper of the Seale, is not remembered to have continued above 18. years.

Some with their Office of Chancellor, have retained other places, as *William Velson* (after Bishop of *Telfard*) was at one time Chaplain and Chancellour to *William the Conquerour*,  
*Ranulph*

*philip Brittain* at one time *Cancellarius Regis*  
*cialis* (as saith *Matthew Paris*) and Treasu-  
 of the Chamber : But the mightiest of living  
 multiplicity of Offices that I may readily  
 de, were *John Mounsell*, in the time of *Henry*  
 3. *Simon Langham*, in the time of *Edw. 3.*  
*John Stafford*, in the time of *Hen. 6.* *Woolsey*  
 ardinall, in the time of *Hen. the 8.* And in  
 honour and temporall Dignities, the Lord Mar-  
 esse of *Winchester*, who was Keeper of the Seal  
 the time of *Edw. the 6.* And thus much may  
 fice for the Originall, Office, Dignity, and  
 ection of the Lord Chancellor : Now may  
 methiug bee added of the Court of Chan-  
 ry, and Authority absolute of the Chan-  
 llor.

As the Chancellor is at this day, *Norma om-*  
*nium jura Reddendum cum omnes Magistrat. bo-*  
*rum suorum fasces submittere non indignantur :*  
 and withall, as *Eudeus* calleth them, *Promus &*  
*audus clementie benignitatisque principalis,*  
 and generally the mouth, the eare, the eye, and the  
 very heart of the Prince, so is the Court, where-  
 of he hath the most particular administration,  
 the Oracle of equity, the Store-house of the favor,  
 of Justice, of the liberality Royall, and of the right  
 rectoriall, which openeth the way to right, giveth  
 power and Commission to the Judges, hath ju-  
 risdiction to correct the rigour of Law, by the  
 judgement and discretion of equity and grace.  
 It is the refuge of the poore and afflicted ; It is  
 the Altar and sanctuary for such as against the  
 might of rich men, and the countenance of great  
 men cannot maintaine the goodnesse of their  
 cause, and truth of their Title, the entry and  
 doore whereof ought, *Patere omni postulanti om-*

The nature  
 originall of  
 the Chan-  
 cery.

*nibus horis, nulli tamen biare*; which is meant  
not to gape after such men as bring rewards,  
seek access to the help thereof by corruption, as  
it is called *Curia*, saith *Valla*, a *Cura*, for the  
care and heed is to be taken therein, for the decid-  
ing of controversies; but it seemeth rather  
be called, *Curia*, an Assembly, or the place of  
assembly, &c. like as the Kings Court was first  
called *Curia*, for that the Court of Justice was  
there first holden.

For the originall of this speciall Court, is to  
be considered, that in the time of the *Saxons* and  
of the *Danes*, the King by himselfe did hold a  
high Court of Justice, wherein he sate in person  
and did judge not onely according to meer right  
and Law, but also after equity and good consi-  
derence; and this is confirmed by the Law of the  
*Saxon King Edgar*, (*viz.*) Let no man seek  
the King, in matter of variance, unlesse he can  
not finde right at home; but if the right be too  
heavy for him, then let him seek to the King  
have it lightened: The like to this Law, is also  
among the Lawes of *Canutus the Dane*; and for  
the understanding of this right at home, we may  
remember that in those dayes were certaine Juris-  
dictions over Leets, Boroughs, and Tythings,  
&c. and there by authority permitted to the  
Reeves or Judges of the lower roomes, for the  
hearing of sutes of small importance, and grant of  
greater power to the Sheriffs and Aldermen which  
had the charge of greater Assemblies, all was re-  
tained and reserved to the King himselfe, the de-  
cision of such matters as by just cause of appella-  
tion, either for law or equity, should be brought  
before him, to be considered and resolved in the  
aforesaid high Court of the King; out of which

are the former, so were all the high Courts  
 of Justice or Conscience at this day derived by  
 Ecclesiasticall Courts or Temporall.

And here I might take some fit occasion to  
 shew by the way, how in the Parliament, Lawes, *Parliam.*  
 onely for civill, and criminall causes, but al-  
 so for the matters of the Church, are made, abro-  
 ged or mitigated; common wrongs not holpen  
 in other Courts, are there amended and heard,  
 difficult causes are there ended, Attainders  
 reversed and annulled, corruption of blood  
 restored, errors committed in other Courts  
 corrected, and all constitutions for the  
 same are there confirmed, &c.

How in the Kings Bench are properly all such *Kings Bench.*  
 causes onely to be handled, which appertaine to  
 the Crowne, or wherein the King is a partie, if  
 they be not by Commission particularly assigned  
 to some other Court.

How in the Court of Common Pleas are hol- *Common Pleas.*  
 den all Common Pleas between subject and sub-  
 ject of all matters of Common Law.

How in the Exchequer are the Queenes re- *Exchequer*  
 venues and her yearly revenues recorded and  
 paid, how it is her common Treasury, and a  
 Court for Justice betweene her Majesty and her  
 subjects, &c.

How the Court of Wards and Liveries is the *Court of Wards.*  
 Court wherein the Queenes prerogative for  
 Wards is maintained, out of which are sued Li-  
 veries, and therein their ages are proved which  
 are in Ward to the King by reason of Te-  
 nure, &c.

How the Court of Starre-Chamber is ordain- *Star. cham.*  
 ed to redresse certaine great offences, provided by  
 statute, and appointed to this Court.

**Duchy  
Court.**

How the Duchie Court of *Lancaster* is the *Queenes Court*, and of *Record*, where are holden all Pleas reall and personall, which concerne any the Tenants of the Duchy but now in the hands of her Majesty, and parcel of her Crowne, but severed in Court and Jurisdiction.

**Court of  
Requests.**

How in the Court of Requests are holden by vertue of their Commission none other but such that are made to her Majesty by way of supplication, which is called the poore mans Court, because he should have right there without paying any money.

**Admiralls  
court.**

How the Admirall hath disseisin of Marine.

**Constable  
of Eng-  
land.**

How the Constable and Marshall of England determineth the Contracts touching Deeds Armes out of the Realme, and handleth matters concerning warres within the Realme, and Captains, Blazon, and Armory, &c. may be tryed by the Lawes of the Land.

**Marshalls  
court.**

How the Marshall of the Kings House before the *Stat. of Articuli super chartas* had Authority to heare and determine the pleas of the Crowne within the verge, and now hath the hearing of Trespasses, Contracts and Covenants made within the verge, &c.

**President  
of wales &  
the North  
parts.**

How the Court of Presidents and Councels in the Marches of *wales*, and in the North parts are Courts of enquiry in their principall Jurisdiction, although they doe withall exercise other powers by vertue of other severall Commissions that doe accompany the same, &c.

I might further busie my selfe with the *Courts Leets*, *Courts of Barons*, and *Courts Pyepowders*, &c. the *Affizes*, *Quarter-Sessions*, *Commissions of Oyer and Determiner*, and Ju-

stice

in Eyre, to search and set downe when, by  
 and upon what occasion all the aforesaid  
 were erected, wherein they doe con-  
 within their appointed limits, and wherein  
 doe usurp Jurisdiction, which was appropri-  
 to some others, &c. but for that the matters  
 moved therein would require a severall  
 cause of every severall Court, for the which I  
 may selfe very insufficient, I will forbear at  
 time to mingle Jurisdctions, and onely con-  
 in the course of the Court of Chancery, the  
 Court I cannot finde in the time of the  
 conquerour, to be severed from the Court of the  
 King, and appointed to be holden by the Chan-  
 cellor, although I read in that time, and the time  
 of *Sonne Rufus*, the ordinary course of Ju-  
 risdiction was altered in forme, but not in substance,  
 whether the *Collegium scribarum*, founded by  
 the Conqueror, whereof he appointed the Chan-  
 cellor to be President, might beare the name and  
 of a Chancery, in very truth I have much  
 doubted, for I cannot gather thereout any jurisd-  
 ction to determine causes; and moreover, I  
 expressely, that during the Reignes of both  
*Williams, Hen. 1. Stephen, and Hen. the 2.*  
 he continued still a Court belonging to the  
 King, which was the place of Sovereigne justice,  
 for matters of Law and Conscience, called,  
*Curia Domini Regis*, and *Aula Regia*, for that the  
 King himselfe did many times sit there in per-  
 son, and had Justices *a latere suo sedente*, as saith  
*Matton*, namely his chief Justice, Chancellor, Con-  
 table, Marshall and others; and howbeit in the  
 year of *Hen. 3.* by the erection of the Common  
 Pleas, the Common Pleas were withdrawn from  
 the Court which followed the King, to a place  
 and

and Jurisdiction certaine, it seemeth that by  
division of Jurisdiction made by *Bracton* in  
Book which he compiled by the commandement  
of K. *Edw. 1.* in the beginning of his reigne,  
of the particular authorities delivered out by  
King to his Justices, Commissioners, and De-  
legates, that the Jurisdiction of determining  
causes now belonging to this Court, did remaine  
to the exercise of himselfe, and yet was not  
Jurisdiction of the other Courts out of the King  
for Jurisdiction, as saith *Bracton*, *Non potest  
Rege delegare*, but the causes proper to this  
Court were managed and determined either  
himself in person, or in his absence by his Chan-  
cellour, Councillours of State and Iustices of  
Law, that continually attend upon him for  
service; namely the Justices to informe him  
the Law, and the Chancellor (which was  
usually a spirituall person) to give advice accord-  
ing to equity and good conscience, in which re-  
spect also he was visitor for the King, and passed  
the presentations of Benefices, so that such  
sought for reliefe by equity, were suitors to the  
King himselfe, who being assisted with the Chan-  
cellor and his Councell, did mitigate the severity  
of the Law in his owne person, when it pleased  
him to be present, and did in absence either  
referre it to the Chancellor alone, or to him  
some other of the Councell; yet have I some  
good causes of conjecture, that the Chancellor in  
those dayes was a Judge ordinary in the said  
Court, to hold plea by Latin Bil, *In monstrance et  
Droit*, Pleas and Enterpleas of Livery and Out-  
le Maynes, of portions and such like, as a Minister  
to make processe, &c. And therefore I cannot  
agree with the opinion of some men, that the  
Court

of Chancery was erected, and first assigned  
 Lord Chancellor, in the 36. year of *Edw.*  
 well for the Patentees afore set downe doe  
 and confirme unto the said *Nevill officium*  
*aria* of the Chancery, and not *Cancellar-*  
*ich* was in *Hen. 3.* time, as also for that in  
 Statutes long before this time, and in  
 Books, there is mention made of the ordi-  
 nary authority of the Chancellor, the Register,  
 the Clerks of the Chancery, (*vix.*) in the  
 of *Glouc.* in *Anno 6.* *Quo warranto, &c.*  
 on *Burnell* in *Anno 11.* Proccesse upon Re-  
 nance, in *Westm. 2. cap. 24.* concordand.  
*de novo brevi, &c.* *Ad cap. 49.* Cham-  
*&c.* and *Statut. Marchante, Brev. al-*  
*ant, &c.* in *Anno 13.* *Stat. de consultat.*  
*endo, &c.* in *Anno 24.* *Articuli (super char-*  
*ap. 5.* follow the King, &c. 6. Seale, &c.  
*no 28.* of *Ed. 1.* and in *Ed. 3.* his time, *Anno*  
*2. cap. 15.* writing by Dures, &c. *Anno*  
*ap. 8.* chuse Escheators, &c. *Anno 5.* *Stat.*  
*adymytt. Attorneyes, &c.* *Anno 19.* *Stat.*  
*Clericorum Cancellar. &c.* *Anno 20. cap. 3.*  
 of Justices Chancery, &c. *ad cap. 6.* Chan-  
 and Treasurer, &c. *Anno 25. cap. 2.* Sley  
 cellor, Treason, &c. and *ibid. cap. 4.* writ to  
 ors, &c. *Anno 31. ca. 3.* Fifty wives, &c.  
 29. of the Booke of Assizes wee may see  
 tion before this time made in the Chancery  
 execution thereof by *Scire fac.* out of the  
 pleas in the 20. *Ed. 3.* Sure in the Chancery  
 Petition to repeale a patent, &c. So may wee  
 ember 15. 18. and 2. *Edw. 3.* for Pe-  
 ons, &c. before this time, and divers other  
 s.

in 20. of *Edw. 3.* an absolute power was by  
 Statute

Statute given to the Chancellor jointly with the Treasurer, to punish divers offences therein mentioned, according as Law and Reason require, &c. but whether this may be said to give the authority of extraordinary and absolute proceeding against the, I stand in some doubt; however I do not think, that the jurisdiction of the Chancery was thereby enlarged, but it seemeth probable, that the Statute of 36. of the King, though it were not the foundation or erection of the Chancery, did notwithstanding addle a great measure of jurisdiction unto the, for there it was agreed by Parliament, that no man were grieved contrary to the Articles that Statute mentioned; which were many generall; or others contained in divers Statutes, he might come into the Chancery, or sue for him, and thereof make his complaint, where he should be relieved by force of the said Articles and Statutes without elsewhere pursuing for remedy: By which Law, the Chancery was not onely made sole Judge in this Court, but was inabled also to proceed in judgement after his owne discretion, for otherwise the without other Sure, were not beneficiall; but giving correction, I take the Statute of 17 Edw. to be the especiall ground-work of the Chancellor his absolute power, where authority is given him upon untrue suggestions, to ordaine and award damages according to his discretion, by expresse word, &c. after which time his power from time to time, *Vires accrevit eundo*, being enlarged by sundry Parliaments, as by one, to forbid Proclamations of Rebellions, &c. against such as would not appeare, and by others, both to grant Commissions of divers kinds, and to

other things, whereof mention shall be  
 the cases set downe hereafter concerning  
 er absolute, the which is intended the  
 but an object of this Treatise; Now  
 re in the meane time may we confidently  
 Chancery the Kings High Court of Con-  
 made especially to redresse private causes,  
 by extremity of Law, cannot have agreed  
 and to equity, by reason of circumstances  
 ing; wherein it is to be noted, that consci-  
 so regarded in this Court, that the Lawes  
 neglected, but they must both meet and  
 in a third, that is in a moderation of extre-  
 It holdeth plea also of common or civill  
 s between the Prince and his Subjects, so  
 rth as the same hath to do with Petitions,  
 ses, *Monstrance de Droit*, and such like;  
 this Court, as from the person of the  
 came all manner of originall Writs,  
 of some are Commissionall or Commissary,  
 Authority to certaine Judges or Officers  
 re and determine causes, some are certifi-  
 , or Remotaries of Records, Pleas or other  
 Some doe command to proceed as Writs  
 procedendo, &c. some inhibit or excuse, as  
 bitions, Protections, or *Gravities de jours*,  
 of *Essoynes*, &c. Some are deductory, to  
 on and bring the party impleated into the  
 , to answer to the Plaintiffe.  
 at of this Court come most commonly Com-  
 ons, Patents, Licenses, Inquisitions, &c. of  
 Court is said, *Articuli super narrationes no-*  
 that it is *Curia ordinaria, pro brevibus ori-*  
*libus emendis & concedendis, sed non pro*  
*is Communibus habuendis*; meant, as it  
 eth, according to the course of the common  
 Law,

Law, and in the Treatise of Diversities of Courts, It is noted, that the Court of Chancery is a Court of high nature, out of the which do proceed Writs Originall, as is aforesaid, and in this Court a man may traverse Offices, and in the same Court the Kings Widdowes shall be sworne that they will not marry without the Kings leave before they be endowed; and it is there said, that the errour upon a Patent or Traverse there, cannot be reversed any where else then in Parliament, &c. And in this Court a man shall have remedy for such things, for therewith he shall not have remedy at the common Law, &c. In this Court of Chancery a man shall not be prejudiced for his mispleading, or for default of forme, but according to the truth of the matter, for that awards there are to be made according unto conscience, and not *Ex rigore Juris*; And further in *Fleta* are these words, *Fiant autem brevia inde iudicialia in Cancellaria ea recognitionibus & contractis habitis & inde Rotulis Cancellarie irrotulatis, Et ex Recordis Consellario & Clericis sibi assignatis per hanc consuetudinem concessa quia de hiis que Recordata sunt coram Cancellario Dom. Regis & ejus Justitiar. qui recordum habent & in rotulis eorum irrotulantur, non debent fieri processus placiti per summonitionem vel Attachamenta Ebonia visus terre & alios Solempnitatis Curie sicut fieri consuevit in contractibus & commencionibus factis extra Curiam, &c.* This Court is also by some called *Offic. Juris Civilis Anglorum*, because out of this Court issue all manner of Proces, which give the party his cause of action in other Courts.

Proces  
Cancellaria.  
ria.

The Proces in the Chancery is a *Subpoena*, which is to call the party before the Chancellor,

upon

pon paine of one hundred pounds, &c. and this  
 the way used to bring in the partie, or else by  
 the Serjeant, as shall be said afterwards, and  
 how the paine is but *in terrorem*, for thereof  
 shall be no forfeiture; but if the party come not  
 in, or comming in will not obey the order of  
 the Court, hee shall be imprisoned, during the  
 pleasure of the Lord Chancellour, as will appeare  
 in the severall handling of his absolute power,  
 where also will be remembred the Stat. of 15 H. 6.  
 that no *Subpœna* may be granted without Surety  
 to satisfie the Defend. for his damages and expen-  
 ces, if the matter cannot be made good, which is  
 contained in the Bill, &c.

The order of proceeding in the Chancery is by  
 Injunctions, Decrees, and Orders, the which  
 how farre they binde the party, and how hee is  
 punished by imprisonment, for resisting them,  
 shall be also shewed in the cases of the power ab-  
 solute hereafter placed.

The Judge in this Court, is the Lord Chan-  
 cellour onely, and he is Keeper also of the Great  
 Seale, the which is usually carryed with him  
 wheresoever he goeth, so he goe not beyond the  
 Seas, for then he is to leave it behinde him to  
 such for whose fidelity he will answer; As did  
*John Stratford* Chancellour and Embassadour in  
 the time of *Edw. 3.* And so did *Stephen Gard-  
 ner*, in the time of *Queen Mary*, when he went to  
*Calice*, leave the Seale with the Marquesse of  
*Winton*, the which lesson he might learne by the  
 chastisement of *Cardinall wolsey*, who carried  
 the same beyond the Seas to *Calice*, where he left  
 it with *Doctor Taylor*, Mr. of the Rolls, to keep  
 untill his returne out of the French Domi-  
 nions.

*The Judge.*

Yet

Yet may there be other occasions also, for the which the Chancellour may commit the same to other mens custody, as did *Robert Thorpe* Chancellour, in the time of *Edw. 3.* at his going home to his owne house hee left the great Scale with foure of the Guardians, or Masters of the Chancery, to keep and use as need required.

Further for the keeping of the Seale wee may remember, that as the King himselve doth deliver the same unto the Chancellour, so may he need surrender it to any other but to the same King or to his Successor.

To this purpose saith *Thomas Walsingham*, that *Sir Richard Scroope* having very solemne Messengers sent unto him from *Rich. 2.* and that in the Kings displeasure, to demand the Great Seale: to be committed unto them: His Answer was, The Seale I am ready to resigne, not unto you, but unto him which gave me the same in custody: *Nec erit medius portitor inter me & illum, sed ego restituum illud manibus suis qui mihi propriis non alicujus manibus commisit illud. Et ita pergens ad Regem sigillum quidem retradidit, & se fidelem Regi sicut haecenus repromissio officiaturum tamen se futurum sub illo in posterum denegavit, &c.*

Yet seemeth it not so necessary, that the Chancellour deliver it with his owne hands: For it is written that *R. Baldolke*, Chancellour, upon the death of *Edw. 1.* did send the great Seale to *Ed. 2.* And *Thomas Rotheram* was shrewdly blamed for that he rendred the Seale to the Queen Widow, to whom it did not appertaine after the death of *Edw. 1.* and in the circumstance of the delivery thereof we may also note this difference, that the Chancellour hath heretofore received an

Oath with the receipt of the same, although the Keeper of the Scale doth receive it without oath, for so it is Recorded, that Ricb. 2. *Manibus suis propriis* received the Scale, *Et ineo continenter prædictus Dom. nost. dictum magnum Sigillum suum in Bago sic inclusum venerab. in Christ. patri. Edm. Episc. Exon. cujus sacrum de officio Cancellarii bene & fideliter faciend. & excereend. lib. recepit in præsentia, &c. liberavit.*

The forme or fashion of this Scale is usually altered upon every succession, the print whereof is directed by the pleasure of the Prince, the validity thereof I dare not to dispute, for that on the one side it is said by the Justices in the reports of the 18. and 19. of this Queene, that a Patent under the Great Scale is good, though the Chancellour have not warranty to make it.

And on the other side, the History is not forgotten, of the Duke of Northumberland, who alleged, as is reported, the Great Scale for his Warrant, &c. which was not accepted, and moreover is recorded in the time of Hen. the 6. a confirmation of such Deeds, &c. as had past the Great Scale, (*viz.*) Henry by the Grace of God, &c. To our Chancellor of England, greeting. All such Grants as that sith the tenth yeare of our Reigne, untill this time, you by force and vertue of Bills with our owne hand, and by Letters under our Signet of the Eagle and Armes, and also by Bills endorsed by our Chamberlains hand, and Clerks of our Councell, have made our Letters Patents under our Great Scale, wee hold them firme and stable, and of as great strength, &c. as though you had for them our Letters of Privie Seale, &c. long before which  
C time

time there was a Statute made in the 2. yeare of  
 Edw. 3. (*viz.*) it shall not be commanded by  
 the Great or Little Seale, to delay or disturbe  
 common right, and though such commandment  
 doe come, the Justices therefore shall not cease  
 to doe right in any point; and by the Statute of  
 Articles, *super Charta*, cap. 6. It is forbidden  
 that from thenceforth should passe under the lit-  
 tle Seale, any Writ that concerneth common  
 Law; And long after this time also (*viz.*) 2. &  
 3. *Phil. and Mary*, cap. 20. It is ordained, That  
 the King under the Great Seale of England may  
 unite Lands to the Duchy of Lancaster; but for  
 the manner of renewing the Seale, the defacing  
 and bestowing of the old, with the Proclamation  
 and notification of the new, we may observe the  
 ancient manner out of these words remaining in  
 the Tower of the time of Edward the First,  
 (*viz.*)

*Rex Ric. Ebor. salutem. Quia pro regimine  
 Regni nostri quoddam magnum Sigillum de novo  
 fecimus fabricari differen. tam in circumferentia  
 quam in diversis sculpturis ex utraque parte  
 sigilli sigillo a quo hucusque utebamur, & volu-  
 mus quod eidem novo sigillo a quarto die presentis  
 mensis Octob. fides prebeatut & dictum antiquum  
 sigillum rumpatur deinde post predictum quar-  
 tum aliquam brevia seu litera nullatenus conse-  
 nentur & impressionem dicti sigilli novi in cera  
 alba tibi duximus transmittendam tibi præcipi-  
 mus quod in pleno Comitatu tuo mercatis feriis  
 & locis aliis in balliva tua ubi expedere videris  
 dictam impressionem ostendi & pate fieri facias  
 omnibus & singulis ex parte nostra injungend.  
 quod brev. brevis literis & chartis dicto novo  
 sigillo consignatis fidem præbeant & aliqua brevia  
 seu*

sen literas post prædictum quartum diem antiquo sigillo signat. non recipiant nec eis utantur quouomodo, volumus tamen quod brevia literæ & chart. prædicto antiquo sigillo ante prædictum quartum diem consignat. in suo robore perseverent & eis fides præbeat. prout accet Teste Rege apud Nottingham tertio die Octobris, &c.

Eodem modo mandatum est singulis Vicecom. per Angliam, and further.

Memorandum quod die Dominica, (viz.) quarto die Octob. Anno Regni Ed. primo; Eliens. Episcop. Cancellar. ipsius Regis in Camera sua in Priorat. de Lenta juxta Nottingham in præsen. clericor. de cancell ar. & aliorum tunc ibidem existent. protulit in quodam panno lineo sigillo suo consignat: quoddam magnum sigillum ipsius Regis de novo fabricatū & asserunt quod voluntas ipsius Regis fuit quod extunc. omnia brev. lit. et coartæ ipso novo sigillo consignaren. & quod antiq. Sigil. sumperat. et diæ Lunæ prox. sequen. in præsentia ipsius Regis in Cam. sua in Castro de Not. dict. antiq. Sigil. præcipiente ipso Rege ruptum fuit in multas pecias & idem Cancellarius pecias illas dedit Richar. Spigurnello ipsius Cancellar. & dictum novum Sigillum ad dictam hospitium cum secum detulit & inde brevia chartas & literas consignavit, &c. And to the same purpose of bestowing the Old Seale, appeareth in Richard the 2. a Writ directed to the Treasurer, &c. of the Exchequer in this form.

Rex Thesaurar. et camerar. Quia ex relata fide signor. accepimus quod quociescunque magnum sigillum quod pro regimine Regni nostri Angl. ordinat. existit per mortem Regis aut alio modo mutari contigerit sigillum illud Spigurnello Cancellar. nostræ pro tempore existen. tanquam secundum

*dum suum de jure pertinere debet, nos valentes dilecto nobis willhelm. wightman Spigurnelle Cancellar. nostra pro feod. suo magni Sigilli dom. Ed. nuper Regis Angl. Aui nostri quod post mortem dict. Aui nostri cum gubernaculum Regni predict. suscepimus mutatum existit satisfieri jubere vobis mandamus quod eidem williel. centum solid. pro feodo suo sigilli predict. de thesauro nostro solvatis excusa pred. Teste Rege apud westm. 6. die Junij, &c.*

*The Assistants.*

The Assistants of the Lord Chancellour are the Masters of the Rolls, and the Masters of the Chancery.

*The Master of the Rolls.*

The Chancellor and the Master of the Rolls, have been heretofore spirituall persons, it appeareth by the election of Bishops, &c. before rehearsed, to the place of Chancellor, and by a Patent of Ed. the 3. the Master of the Rolls was appointed and installed in the house of the Rolls in Chancery-lane by the Lord Chancellor, the which manner of induction and installment continued as long as the Masters of the Rolls were of the Clergy, which may be proved by the Presidents of those Inrollments, and the Writs themselves extant of Record.

The Mr. of the Rolls at this day is the Keeper of all Records, Judgements and Sentences given in the Chancery.

Besides that, in the absence of the Chancellor he doth both heare and decree, &c. as well in the Court, as in the Chappell of the Rolls, howbeit the Decrees made by him are entered either *Per curiam*, or *Per Cancellar.* and further, he hath much preheminence, and divers prerogatives by Statutes, Commission, and prescription.

The Masters of the Chancery are, for the most part

part, Doctors of the Civill Law, and doe assist the Court, to shew what is the equity of the Civill Law, and what is conscience; but surely they have bin heretofore such as have beene expert in the course of the Chancery, and skilfull in the Lawes of the Realme, as appeareth by the 2d. of Rich: 3d. where they doe shew unto the Justice, the course of Writs of Error, and may be gathered out of the Book, Intituled *Fleta*, whose words are these.

*Est inter cetera quoddam Officium quod dicitur Cancellaria quod in viro provido & discreto utpote Episcopo vel Clerico magnæ dignitatis debet comitti simul cum cura magni sigilli regni cujus substituti sunt omnes Cancellarij in Anglia, Hibernia, Wallia, & Scotia, omnes quæ sigilla Regis custodiētes ubique præter custodem sigilli privati, cui asocientur Clerici honesti & circumspecti Domino Regi Jurat. qui in legibus & consuetudinibus Anglicanis notitiam habent pleniorē quorum officium sit supplicationes & querelas conquerentium. audire & eis super qualitatibus injuriarum ostensurum debitum remedium exhiberi per breviam Regis, &c.* And further of the Masters of the Chancery *ibidem*.

*Episcopi autem collaterales & socij Cancellarij esse dicuntur Præceptores eo quod breviam causis examinatis remedialia fieri præcipiant & hoc quandoque tam sive denarijs ad opus Regis tam sive Fine, &c.*

The Officers in this Court are the Pregnatory of whose Office in *Fleta* is written thus.

*Habet & Rex Clericos suos Prothonaries in Officio illo, qui cum Clericis, &c. Familiares Regis esse consueverunt & præcipue ad victum & vestitum qui ad breviam scribend. secund. diversitates*

The Officers of the Chancery:

*gates querelarum sunt intitulati & qui omnes p  
victu & vestitu de proficuo sigilli in cuiuscu  
que usus pervenerit debent honeste inveniri.* But  
at this day there is but one Pregnatory, neither  
doth he exercise his Office in the form abovesaid.

The Clerk of the Crown is the chief Guardian  
of the matters of the Crown.

The six Clerks of the Chancery, which are the  
Attornies, as well for the Plaintiffe as Defen  
dant, in every Sute in this Court, and they were  
heretofore Spirituall men, as may appear by the  
Statute 14. Hen. 8. which doth License them to  
Marry, with Provifo; That the Master of the  
Rolls may notwithstanding grant those Offices  
as before time, the forfeiture by reason of Mar  
riage only excepted.

The Register, who is the penner and keeper  
of the Decrees, Publications, Orders and In  
junctions issuing out of this Court.

The Comptroller of the Seale, who is to see  
and allow of all the Writs made in the Court, of  
whom I take it is spoken in *Fleta*, where it is  
said; *Eleget & Rex Clericos in Officio illo ex  
pertes & legales qui formas brevium cognoscant  
qui approband. admittant, defectiva omnino re  
pellant. quibus omnia brevia priusquam ad sigil  
lum perveniunt cum deliberatione distincte et ex  
perte in ration. dictione litera & silliba exami  
nare injunctum est, & sciend. quod nullum bre  
vifi per manus eorand. debet ad Sigillum admitti*

Two Examiners also, who do take the Ex  
amination of the Witnesses, brought to prove or  
disprove any thing in Sute in this Court, and  
put their Depositions and Answers made, and  
their Interrogatories in writing.

The Clerk of the Hamper, which doth receive

the Fines, due for every Writ sealed in this Court, &c.

The three Clerks of the Pettibagge, which doe Record the Offices that are found in the Court of Wards, and have the making of divers Writs proper to their Office, &c.

The 24. Cursitors have sundry divisions of charges, for the writing of all Writs Originals, &c. in all the Shires of England, &c. *Quibus de gratia Cancellaria concessum est pro expeditione populi, brevibus facere Cursoria*, as is in *Fleta*; the which Cursitors at this day, by Ordinance set downe by the deceased Sir Nicholas Bacon Lord Keeper, and confirmed by her Majesties Letters Patents, are authorized and appointed to make all manner of Writs of Debt, Trespass, Accompt, Assizes, Attaints, Replevies, Conspiracies, *Cui in vita Dower*, and Formedons, Ejectments of Leases and custodies, Errors, false Judgments, Petitions *quare impedit*, Recordaries and Writs of Right, *valore Maritagij*, Wast, Excommunicat. *Capiend.* and all Writs of Covenant, and of every and all manner of *Dedimus potestatem*. to be made upon any such Writs, and originall processe, and all other originall Writs, or of the nature of originall Writs, that are to be made within the Shires and Places to them allotted; And that no other person shall make these Writs but they, by which Ordinance also the nomination and allowance of these Cursitors, doth appertain to the Chancellor or Keeper of the Great Seale for the time being, as in the said Ordinances is declared, together with all other Orders, &c. concerning the said company, whereof is to be observed, that although by the late Lord Keeper the writing

of the aforeſaid VVrits was particularly affigned to ſuch particular Officers, yet were there Curſitors before that time, of the ſame name, and of the ſame exerciſe. The Serjeant of the Mace who carrieth the Mace before the Lord Chancellor, and is to call any man before him, at his commandement. There is alſo mentioned in Record of Edw. 3. *Officium de portandi rotuli ubi Curia ſe divertabat priuſquam in loco certo tenebatur vocat Portij. conſeſſum Adam Marlyn, &c.* The which is the ſame Office of Keeper of the Rolls at this day. And this place in the 13th year of Edw. 3. was granted by the Chancellor and Maſter of the Rolls, the which Grant remaineth upon Record. Other Officers there are for particular Functions in the Chancery, granted by Patent from the Prince, as making the VVrit of *Diem clauſit extremum*, making of Subpoena's, writing the Licenſe of Alienation, of Protections, and a great number of others of the like nature; ſo are there alſo the Sealer, the Chaſe-wax, &c. Some are conſtituted by Parliament to be Ordained by the Kings Letters patents, as the writer and inroller of confirmations of all ſuch Licenſes, Diſpenſations, &c. as ſhall be brought into the Chancery, under the Archbiſhop of Canterbury his Seal, &c. For the Oath to be taken by the Clerks of the Chancery may be ſeen the Statute of 18. Ed. 3. which is to be taken not by the ſix Clerks only, but by all other Officers in the Chancery, of the ſame quality, and their ſervants alſo. Moreover for the privilege of the Officers in the Chancery there is a record of Rich. the 2.

*Quod Clerici ibidem nec eorum ſervientes cogantur reſpondere coram aliquibus Juſticiariis*

*hijis & Judicibus secularibus praterquam coram Cancellario Regis seu custode magni sigilli Regis super aliquibus placitis seu demandis quae Dom. Regem non tangunt (except placitis de libero ten. felon. & Apellis Brev. Regis. Anno secundo, R. 2. parte secunda, Article 18.*

The forme of their privilege is set down in the Register of Writs; and in the new *Natura brevium*.

The Masters of the Chancery have privilege to be exempted from being Procurators of the Clergy.

But leave we the Officers, to speak something more largely of the power of the aforesaid Judge, which is the Chancellor, &c. wherein will fall out some further matter concerning the Chancery.

### *The absolute power of the Lord Chancellor.*

THE power of the Lord Chancellor is divided into two parts, the one Judiciall, and the other Ministeriall; the Judiciall is likewise of two distinct parts, (*viz.*) either absolute, or else ordinary; whereof intending to proceed to their particular discourse, I have chosen the absolute power to be the first, as well for that it proceedeth in Dignity, being absolute without controllment, other than in Parliament; as also it spreadeth it self most largely, being most infinite, without any prescribed limitation, intending to leave the rest to be hereafter severally handled with better opportunity.

In this present Treatise I have plainly and faithfully

faithfully set down the Cases, Opinions, and Decrees, in such sort as they may, by the Reports of the Year-Books, and by the ancientest sort of Records in the Chancery, be best warranted and have thought fitter to set down the makers of the Statutes, and the pronouncers of the Law to be heard as it were speaking in their own phrases and proper terms, than that I should presumptuously wrest the same into any other curious method, only I had regard unto two things, the manner of proceeding, and the matter of the subject, unto the first I referred these Titles following, (viz.)

**CHAP. 1.** *Of the Authority Judiciall of the Lord Chancellor, and Court of Chancery in generall for present.*

**Chap. 2.** *What matters he may absolutely hold Plea of, in his absolute power.*

**Chap. 3.** *Whom he may call to be assistants.*

**Chap. 4.** *How the absolute power increased, and of the Statutes concerning the same.*

**Chap. 5.** *Of what force the Decrees, Injunctions, Executions and Punishments of the Chancery be.*

**Chap. 6.** *Whether the Chancellor may intermixe his power absolute, with the ordinary.*

**Chap. 7.** *The forme of pleadings.*

**Chap. 8.**

Chap. 8. *What costs and damages shall be awarded in the Chancery.*

And under the second I have contrived these Titles.

CHAP. 1. *Of Lands.*

Chap. 2. *Of Lands in use, or in trust.*

Chap. 3. *Of Coppy-holds.*

Chap. 4. *Of Chatells reall.*

Chap. 5. *Of Chatells personall.*

Chap. 6. *Of Chatells in trust.*

Chap. 7. *Of Aliens, and Strangers.*

Chap. 8. *Certaine speciall powers absolute, given to the Lord Chancellor by severall Statutes.*

Chap. 9. *Certaine speciall powers absolute, given to the Lord Chancellor joyntly with others, by severall Statutes.*

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CHAP.

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## CHAP. I.

Of the Authority Iudiciall of the Lord  
Chancellor, and Court of Chancery  
generall.

9. E. 4.  
Potentia  
ordinatam.

**T**He Chancellor hath two manner  
of powers, (*viz.*) *Potentiam ordi-*  
*natam*, and *Potentiam absolutam*.  
*Ordinata potentia*, is where a cer-  
tain order is observed, and so it is  
used in positive Law.

Potentia  
absoluta.

Default.

Excom.  
veritatis.

But *Potentia absoluta*, is *lex naturæ*, *quæ*  
*habet certam ordinem*, but useth all meanes  
to know the verity, *Et ideo dicitur processus absolu-*  
*tus*, also in *lege naturæ* requiritur, that the parties  
be *præsentes*, or that they be *absentes*, per *con-*  
*maciam*, which is when they are warned, and make  
default, and in both these there must be *Excom-*  
*municatio veritatis per Cancellar.* 9. E. 4. 11.  
*Subpœna*, 11. b. *Conscientiæ*, 26. b. *Justi-*  
*dict.* 10.

37. H. 6.

Court of  
Record.

3. E. 4.  
Statute  
proces.

Right.

2. The Chancery is no Court of Record, in re-  
spect that it is a Court of Conscience, and hold-  
eth Plea upon *Subpœna*, but as it tryeth matters  
upon *Scir. fac.* and Debt, and such like, it is a  
Court of Record, per *Prisc. Cap. Justic. in Com-*  
*Banco*, 37. H. 6. 14.

3. If a Statute do ordain processe at the Com-  
mon Law, the Chancery doth not follow the  
Form prescribed by the Statute; but if a Statute  
doth give a title of right to any man, then the  
Chancery doth obey the Statute; per *Cancellar.*  
8. E. 4. 5. This is to be understood of general  
Statute

statutes, in which the Court of Chancery is not expressly named.

4. The Chancery may hold plea upon *Scir. fac.* and other such Writs as appertain to that Court, as well out of the Term as in the Term, per *Fitz Herbert in Natura Brevium. b. Jurisdic.*

*Fitz. Natura bre-  
vium.)  
Term.*

116.

5. When the Term is adjourned by reason of sickness, or of any other cause; yet the Chancery is never adjourned; for the Chancery is always open, 4. E. 4. 21. b. *Jurisdic.*

4. E. 4. 21. b. *Adjourn-  
ment.*

6. In an *audita querela* sued to avoid a recognition, knowledged in the Chancery, the Chancellor ought to judge according to the course of the common Law, because the matter cometh before him by Originall Writ, but upon matters depending before him upon Bill, he may judge according to conscience, 5. E. 6, *Con. 72. casus Rosse & Pope.*

5. E. 6. *Common  
Law.  
Originall.  
Conscience.*

7. The Ceancellor ought not to take precise knowledge of any surmizes, nor ought not to take away the Jurisdiction of any Court, nor the profit of any person, by credit or suggestions, 6. E. 6. *Con. 74. casus Wymbish, &c.*

6. E. 6. *Surmise.*

8. By these authorities it appeareth, that he hath two powers, th'one ordinary, th'other absolute: By the ordinary, he holdeth plea in Latin, and the Record after issue joyned, is sent into the Kings Bench, to be tryed by Jury.

And this is wholly according to common Law, and in such it is a Court of Record; but the absolute power holdeth plea upon Subpoena, and by English Bill, and by pleading, and so it hath been used, excepting in *Anno 20. H. 6.* there are some Bills in French, as appeareth by the Records of that Year, and he intermedleth only with mat-

*English  
Bill.  
Pleadings  
in French.*

ters

ters of Conscience, and therein it is no Court of Record, and in both these powers he may hold plea out of the Terme.

## CHAP. II.

*What matters he may hold plea of in the absolute power.*

1. **T**HE Chancery in the absolute power, holdeth sute by Subpœna only, of such matters as are not remediable by the Common Law, per 39. H. 6. *Novemedy. Prisot. capit. Justic. in Com. Banco* 37. H. 6. 14. & per Jenney *Apprentic.* 39. E. 6. 2. 6. conscience, 6. & 4. E. 7. 4. *Subp.* 17.

2. It appeareth that in Anno 21. E. 4. Many Subpœna's were used to be sued, and therefore *Fairfax* Justice said; That if the Chancellors would be good Pleaders, there would not be so many Subpœna's sued in the Chancery as there are, for divers of those Chancery matters might be converted to actions upon the case, and so the Jurisdiction of the Common Law Courts should be maintained, as for example; if one do obtain a *Supersed.* of privilege upon a false surmise, an action upon the case doth lye, and there needeth no Subpœna. 21. E. 4. 23.

3. The Chancellor must judge *secundum conscientiam*, & non *secundum allegatum*. For if the Complainiffe suppose in his Bill, that the Defendant hath done some wrong, and the Defendant answereth nothing; yet if the Chancellor hath knowledge that he hath done no wrong to the Complainiffe, the Complainiffe shall not recover at all, per *Cancel.* 9. E. 4. 14. *subp.* 11.

consc. 26. & 6. Jurisdictiones 30.

4. One sued by Bill in the Chancery, and he could not prove his Bill, but the prooffe of the Defendant was better than his; Wherefore Grevill Serjeant said, That the Defendant ought to have Judgment to be discharged, and Complain-  
tiff to be barred; to whom it was said for the Complain-  
tiff, That the matter is determinable at the Common-Law, and therefore such Judgments may not be given; and Grevill said, That the Complain-  
tiff shall be estopped to sue so, because it is his own doing; And when one sueth a Bill, he must prove his Bill before he shall have Judgment, although the Defendant never answered; and the Chancellor was of the same opinion; but yet Conesby Serjeant, said to the Defendant, That he should never have Judgment in the Chancery upon the matter, but only a proceeding. 21 H. 7. 34. H.

Estoppel.  
Default.

5. By these causes it appeareth, That the Chancellor holdeth plea but of matter not remediable at the Common Law, and that he must judge according to truth, and not upon the default of the party, as the Common Law useth.

6. Note that in ancient time, where the matter was against reason, and the party had no remedy at the Common Law, it was used to sue for remedy in Parliament, and the Parliaments were holden of course, twice every year, but now most of those sutes are in the Chancery, and the Parliaments are not so often holden; vide Rot. Parliam. Brooke Parl. 33.

7. The Chancellor said, *Nullus recedat a Curia sine remedio*; but Fineux said, *si nullus recedat sine remedio ergo nullus indiget esse confessus*; but the common Law is ordained for many

Remedy  
without  
Remedy.

many matters, and some, such as are not remediable by the Common Law, are to be relieved in the Chancery, but divers are remediable by another; and such are in Conscience between a man and his Confessor, 4. H. 7. 4:

Conscience  
Doctor &  
Student.  
without  
Remedy.  
Conscience.

Wager of  
the Law.

False ver-  
dict.

Prooffe.

8. In many cases where a man doth wrong, he shall not be compelled by way of compulsion to reform it, for many times it must be left to the Conscience of the party, whether he will redresse it or not, and in such case he is in Conscience, as well bound to redresse it, if he will for his soule, as he were if he were compellable thereto by the Law. As if the Defendant wagers the Law in an action of debt, brought upon a debt, the Plaintiffe hath no means to come to his debt, by way of compulsion, neither by *Suapœna*, nor otherwise, and yet the Defendant is bound in Conscience to pay him. Also, if a Grand Jury in Attaint affirm a false Verdict, given by a petty Jury, there is no other remedy in the Conscience of the party: Also where there can be had no sufficient proof, there can be no remedy in the Chancery, no more than there may in the spirituall Court, as Doctor and Student Ca. 18.

9. Note by these two last Authorities, that there are two sorts of *Leges conscientie*, the one is *lex conscientie politica*, by which the Chancellor ordereth matters; In which Law of Conscience, there is respect had unto the Law, Customes, and State of this Commonwealth; the other is *lex conscientie Divina*, by which there is no compulsive relief in this world, the offender standeth at the judgment of God only, and this in times past was said to be examinable between the Offendor and the Confessor.

Note also that this rule, *Nullus recedat a Canc-  
lar. sine remedio*, is to be expounded that the  
Chancery giveth remedy for the common law  
matters, by granting of the Originall Writs,  
which are for the most part returnable into the  
common law Courts; and for matter of Consci-  
ence, by examining them in the Chancery it self,  
whether doth this rule any way extend to the Law  
of Conscience divine.

The Statute made in the 4. H. 4. is this:  
That whereas in Plea reall as well as personall, *stat. 4. H.*  
after Judgment given in the Kings Courts, the 4.  
parties be made to come upon grievous paine,  
sometimes before the King himself, sometimes  
before the Kings Councell, and sometimes in- *Judgment.*  
the Parliament, to make new answer there-  
unto, to the great annoyance of the parties, and  
subversion of the common Law. It is ordai-  
ned, That after Judgment be given in the Kings  
Courts, the parties and their heirs be thereof qui-  
t, untill the Judgment be admitted by attainr or  
error, if there be any error, as it hath beene  
judged by the Law, in the time of the Kings Pro-  
curators. *Stat. Anno 4. H. 4. Ca. 22.*

And upon the said Statute is made by Doctor  
and Student an inference, (*viz.*) There is a Sta-  
tute, made 4. H. 4. *cap. 22.* Whereby it is En-  
acted; That Judgements given in the Kings  
Courts, shall not be examined in the Chancery,  
Parliament, nor else where; by which Statute it  
appeares, that if any Judgment be given in the  
Kings Courts against Conscience, that there can  
be had no remedy, for the Judgment cannot be  
remedied without examination, and the exami-  
nation is by that Statute prohibited; Yet this  
statute is not against Conscience: for if such

Judgments should be examined in the Chancery before the Counsell, or in any other place, the Plaintiffs should seldome come to the effect of their sute, nor the Law should never have end to eschew that inconvenience the Statute was made, *lib. Doct. & Stud. cap. 18.* Note by the Statute, and by this explanation thereof, that the Chancery may not examine, nor intermeddle after judgement is given at the Common Law, and yet the Statute speaketh not expressly of the Chancery.

### CHAP. III.

*Whom he may call to be assistants to him.*

**I**N a Parliament holden in the 2d. year of **H. 4.** The Commons exhibited a Petition conceiving that the Justices of both the Benches were called into the Chancery from both their places, to help the discussing of matters traversed into the Chancery, whereby the Common Law was hindred, and the subjects damaged, and therefore they prayed; That it might be Enacted That when any traverse of any Office is rendered in any *scir. fac.* awarded, that the same may be sent and returned into one of the Benches, there to be discussed and ended according to Common Law.

To which Petition the King answered, that the Chancellor may do so by his Office, and let it be as it hath been heretofore, by the discretion of the Chancellor for the time being, *Rot. Parl. Ann. 2. H. 4. Artic. 95.*

2. The Statute *de Anno 4. H. 4.* is, Let the Chancellor have power, by Authority of Parliament, to call unto him such Justices as it shall please him, and the chiefe Baron of the Exchequer it need be, to provide remedy from time to time, according to their discretion. Stat. Anno 4. H. 4. cap. 9. in most of the time of H. 6. the Decrees were entred in this forme, *Considerat. Temp. H. 6. fuit per cur. de Assensu Johannis Fortescue Militis. Decrees capitalis Justic. Dom. Regis, ad placita tenend. & diversor. alior. Justic. & Servient. ad legem in Cur. present. existent. quod, &c.* And sometime it was *De assensu omnium Justic. utriusque Banci.* And sometimes of one or two Justices, *petition in Cantellar. de temps H. 6.*

In the Chancery upon a Subpœna sued, the matter being doubtfull in Law, the Chancellor adjourned the parties into the Exchequer Chamber, and called the Justices of both Benches to assist him. 27. H. 6. 13. b. consc. 4. & 37. H. 6. b. consc. & 7. E. 4. 14. & 22. E. 4. b.

The Lord Chancellor called Fitz-barbert, Justice into the Chancery, to assist him in the argument of a Question in Law, arising upon a sure of Conscience, 27. H. 8.

By these Authorities it is evident, That the Chancellor may, as well in matters concerning the absolute, as ordinary power, call the Justices to assist him, and that either into the Chancery, or into the Exchequer Chamber.

## CHAP. IV.

*How the absolute power increased, and  
of the Statutes concerning the same.*

*Magna  
Charta.*

**T**HE Statute of *Magna Charta* is, That *Nul-  
lus liber homo capiatur, vel imprisonetur  
aut disceissetur, de libero tenemento suo, vel liber-  
cat, vel liberis consuetudinibus suis, aut ut loqe-  
tur, aut exuletur, aut aliquo modo disturbatur,  
nec super eum ibimus, nec super eum mittemus,  
nisi per legem terra, Magna Charta cap. 30.*

*Doct. &  
Stat.*

*Stat. 5. E. 3.*

This Chapter is but a confirmation of the custom  
of the Realme, *lib. Doct. & Student, cap. 7.*

2. The Statute of the 5. E. 3. is, That none  
shall be attached, by any accusation, nor fore-  
judged of life nor limb, nor his Lands, Tene-  
ments, Goods nor Chatels seized into the Kings  
hands, against the form of the Great charter,  
and the Law of the Land. *Statute 5, E. 3.  
cap. 9.*

*15. E. 3. 5.  
Stat.*

3. The Statute of 15. E. 3. is, That none shall  
be taken, by Petition or Suggestion made to the  
King, or to his Councell, unlesse it be by In-  
dictment, or Presentment of good and lawfull  
men where such deeds be done, in due manner,  
or by Proses made by writ, or originall at the  
Common Law, nor that none be put out of the  
Franchises, nor of their Free holds, unlesse he be  
duely brought in to answer, and forejudged of  
the same by way of Law, and if any thing be  
done against the same, it shall be redressed, and  
holden for non-Statute. *Anno 25. Edw. 3. cap.  
4th.*

4. The

4. The Statute 28. E. 3. is that no man shall be put out of any Land or Tenement, or taken, or imprisoned, or disherited, or put to death, without being brought in to answer by due proces of the Law. *Statute Anno 28. E. 3. cap. 3.*

5. By these Statutes it seemeth that neither the King, Counsell, nor Chancellor, might not attach, imprison, banish, or put to death any man, nor seize his lands nor goods, or cause him to answer, but upon indictment, presentment, or original, as in the case ensuing.

A Commission was awarded out of the Chancery in 42. E. 3. to Commissioners, authorising them to apprehend a man and his goods, and to commit him to Prison, and because this was done without Indictment, or sure of any party, or other due Proces, it is contrary to the Law, and the Commission was adjudged void, *per Knivet & Thorpe, Capital. Justic. 42. Assi. 15. & Crompton 67.* 42. E. 3.

The Statute of 37. E. 3. That though it be not contained in the great Charter, that no man be taken, imprisoned, or put out of his Freehold, without proces of the law, yet divers people make false suggestions to the King himself, as well for malice as otherwise, whereby the King is often grieved, and divers of the Realm put to great damage and losse, against the form of the same Charter. Wherefore it is ordained, that all they that make such suggestions, be sent before the Chancellor, Treasurer, and his great Counsell, and that they there finde surety to pursue their suggestions, and to incur the same pain that the other should have had if he were attached, in case that this suggestion be found evil, and that then proces of the Law be made against them, without being

being taken or imprisoned, against the forme of the Great charter. *Stat. 37. E. 3. cap. 18.* But this punishment is qualified by another Statute.

By this Statute, the abuse of suggestions was reserved, and a form of proceeding appointed, also it seemeth to allow, that the party accused may have punishment, if the suggestion be true, by these words [the same paine as the other should have had if he were attainted.]

Also, though the Statute make mention that the Petition be sent before the Chancellor, Treasurer, and Counsell, yet this hath been expounded of the Chancellor in the Chancery alone, as experience teacheth, and so was the Law taken before the making of this Statute, in *Anno 12. E. 3. 47. b.* Jurisdiction 102. notwithstanding that the Petitioners, were by the indorsement directed to the Archbishop and Counsell, calling to them the Chancellor.

12. E. 3.  
Petition  
Punish.

Stat. 43.  
E. 3.

The Statute of *Anno 43. E. 3.* is, That some accused persons have been imprisoned, and others compelled to come before the Kings Counsell by writ or otherwise, upon a greivous paine against the Law; It is therefore assented, that no man be put to answer without presentments before Justices, or thing upon record, or by due process, or by writ originall, according to the old Law of the land; and if any thing from henceforth be done to the contrary, it shall be void in the law, and holden for error. *Stat. Anno 42. E. 3. cap. 3.*

11. By this Statute it appeareth, That men had been compelled to come before the Counsell by Writ or otherwise, upon greivous paine, which employeth the usage of the Subpcena, but

was all restrained by this Act.

12. The Statute of 17. R. 2. VVhen people be compelled to come before the Kings Counsell, or in the Chancery by writ ground upon untrue suggestions, the Chancellor for the time being, by and by after such suggestions be duly found and proved untrue, shall have power to ordaine and award damages according to his discretion, to him which is so troubled untruly, Stat.

anno 17. R. 2. cap. 6.

13. This Statute, as it giveth damages against the accuser for it, establissheth the authority of the Chancellor in trying of such sutes, for the makers of the Statute would not ordain punishment for the abusers of such suggestions, unlesse they had meant to allow of the sutes being orderly used, and this Statute seemeth to give the first and greatest allowance to the Jurisdiction of the Chancery by Subpcena, which appeareth by Petition made by the Commons, in a Parliament holden 3. H. 8. where they complained, that the Writs, called Subpcena, *et certis de causis*, were never granted before the time of R: 2. the art. of which complaint are as followeth.

In the third year of King H. 5: the Commons exhibited a Petition unto the Parliament, concerning the grievances that did arise by the Sutes of Subpcena in the Chancery and Exchequer (*viz.*)

That these writs were sued of matters determinable by the Common Law.

Rot. Par.

That they were never granted nor used before 3. H. 6. the time of Richard the second, wherein John

Waltham late Bishop of Sarum, and the Masters of the Rolls, by his subtilty, caused them to be found out, and to begin, that they are contrary to the form of the Common Law.

That they are a losse and hindrance of the profits which should arise to the King, by the Fees, Fines, Issues and Amerciaments, and other profits in other Courts, if such matters were sued and determined by the Common-Law, because no profit ariseth to the King by the Subpœna, but only 6 d. for the Seal.

That the Justices of both Benches, when they should intend their places, about Pleas and taking of Inquests, for the dispatch of the People, be occupied with the Examinations upon Subpœnas to the great vexation, losse, and costage of the People Subjects.

That the Subjects are long time delayed from the sealing of their Originall writs, because of the great businesse of the Chancellor about such examinations.

That in such examinations there is great clamor and noise made by men unlearned in the law without entering any record thereof.

That such suites will not be ended but by examination and oath of the parties, according to the form of the civil Law and Spiritual Law, in the version of the Common Law.

That if the Defendant cannot be convicted at their examinations, then they are forced to compound and agree with their adversaries; or else to abide in ward, or upon Baile, untill they be compounded or agreed.

That if the Defendants cannot be convicted at their examinations, then they are forced to give Sureties for the Peace, which they might have

me in their Country, without repaire to the  
courts.

VWherefore they pray redresse after speciall  
form in the Bill limited, but this Bill  
passeth not. *Rot. Parl. Anno 3. Hen. 5.*  
*Art. 46.*

14. The Statute made in the 15. H. 6. is, That *Stat. 15.*  
divers persons have been greatly grieved by writ *H. 6.*  
of Subpœna, purchased for matters determinable by the Common Law of this Land, to the great damage of such persons so vexed, in subversion and impediment of the common-Law, the King will, that the Statutes thereof made, shall be kept after the form and effect of the same, and that no writ of Subpœna be granted, till surery be found to satisfy the party so grieved and vexed for his damages and expences. (if so be the matter cannot be made good, which is contained in the nBill.) *Statute Anna 15. Hen. 6. cap the 4th.*

15. This Statute explaineth, that the making of the great Charter, and the other old Statutes, was to redresse suggestions to the Kings Counsell or Chancellor, where the matters were determinable at the common law, but extendeth not to such as had no other remedy. For this Statute willeth that the old Statutes shall stand, and yet alloweth a Subpœna to be granted, upon putting in of sureries. It is proved also by this President.

Note also that there are no petitions of the Chancery, remaining in the Office of Records, of elder time then the making of the said Statute.

16. One sued by Petition to the King, who delivered

21. E. 3.  
Petition

(53)  
livered the same to the Chancellor, and upon  
*scire fac.* the Defendant appearing, took excep-  
on, alleging; That his Sute is to recover his  
Freehold which ought to be at the common law  
& *non allocatur*, because this Sute cannot be in  
any Court but in the Chancery, 21. E. 3. 47. *judi-  
risdict.* 102.

Note also that there are no Petitions of the  
Chancery remaining in the Office of Records, of  
elder time, then the making of the Statute of the  
15. H: 6. for the ancientest to be found are in the  
20th. yeare.

So that by this may appear, that the absolute  
power was feared, and prevented in the time of  
K. John, by whom the *Magna Char.* was gran-  
ted, and that it was frequented and usurped in  
the time of Edward 3. who so often restrained  
the same, and it was allowed and established in  
the time of R: 2. who in some part made Reforma-  
tion thereof.

## CHAP. V.

*Of what force the Decrees, and In-  
junctions, Executions, and Pu-  
nishments of the Chancery be.*

39. E. 3.  
Judgment 1.  
Reversall  
Counsell. **I**N an Assize, the Parliament wrote to the  
Justices to surcease, notwithstanding which  
they proceeded, and awarded the Assize  
whereupon the Chancellor did reverse the judg-  
ment

ent before the Councell, this reverfall was ad-  
 judged void, for that was no place where a Judge-  
 ment might be reversed, 39. E 3. 14. b. Judges

It was decreed in the Chancery, by the advice of 33. H. 6.  
 the Justices, that the Defendant should bring  
 an Obligation, wherein the Complaintiffe was  
 bound to him to be cancelled, and because he re-  
 fused, hee was committed to the Fleete, there to  
 remain untill he would fulfill the Decree, and the  
 Defendant having put his Obligation in sute at  
 the common Law, the Complaintiffe pleaded this  
 Decree in Barre, and it was ruled to be no good  
 plea in Barre, because the obligation had lost his  
 force by the Decree *per Prisot & alios Justic.*  
*com. Banco.* Obligation

And if it had been decreed by expresse words,  
 that the Obligation should lose his force, these  
 words in the Decree would have bin voyd at the  
 common Law, *per Billing Serjeant*, and of the  
 Councillors award a *superf.* under the Great  
 Seal, reversing the Decree, and commanding the  
 Justices not to proceed at the common law, the  
 same is not to be obeyed, otherwise it is a *superf.*  
*of Privilege, per Billing & Boef Serjeants, Privilege.*  
 37. Henry 6. 13. Barre 75. b. consc. 4

2. If a Feoffee upon trust, refuse to performe  
 the trust, and upon Subpoena, in Chancery it is 37. H. 6.  
 decreed that he shall reinfessee the Feoffor, and  
 he refuse and is committed, if the Feoffor enter  
 into the Land, and the Feoffee bring an Assize  
 against him, this Decree is no plea in Barre  
 to the Assize, *per Laicon Serjeant.* 37. H. 6.  
 13. Assize. Decree. Plea.

3. Note that Judgment was given in the Chan- 37. H. 6.  
 cery in Pleas of Debt or of Parents may be plea- Judgment  
 d. dPlea.

Decree.  
Court of  
Record.

ded in any other Court at the common law, otherwise it is of decrees made, thereupon a Subpoena because it is no Court of Record, in respect such sutes, *per Prisot: cap. Justic. Co. Ba. H. 6. 14.*

37. H. 6.

4. Note that if it be decreed that a Defendant shall bring in an Obligation to be cancelled, the Chancellor can do no otherwise but commit him to prison, to remain there untill he will do it, and that is all which the Chancellor can do for if the party will lye in prison, rather than deliver the Obligation, the Complaintiffe is without remedy, *per Prisot. cap. Just. Co. Ba. H. 6. 14.*

9. E. 4.  
Commande-  
ment.

5. Note that Young Justice demanded the Question, What if the Chancellor should command me upon a pain, that I should not sue a Debtor? Billing Justice answered, that he was not bound to obey it; for that commandement contrary to Law: 9. E. 4. 53. b. Judges 22. b. this is meant of a commandement, no Bill being exhibited.

22. E. 4.  
Injunction  
Judgment.

6. In an action of Trespasse, the Plaintiff recovered by verdict at *nisi prius* before Judgment the Chancellor granted an Injunction, commanding the Plaintiff that he should not proceed to Judgment upon pain of 100l. Fairfax Justice said, that although the Injunction were against the Plaintiff, yet his Attorney might pray Judgment, *vel è contra*: Hussey chief Justice of England said, that they had communed upon the matter, and they could see no hurt that could come to the Plaintiff, although he prayed Judgment contrary unto the Injunction, for the Law doth not give any forfeiture of the summe contained in the Subpoena, and if he be committed to the

Forfeiture.  
Subpoena.

et we will presently grant a *habeas corpus* *Habeas*  
 fore us, and then we will dismiss him, and the *Corpus*.  
 Justices said, though the Chancellor would not  
 allow the Injunction, yet they would give  
 judgment if the party would desire it, *quod no-*  
*in Banco Regis*, 22. E. 4. 37. 6. Judgement

King Richard the third called before him in  
 the Inner Starchamber all his Justices, and de-  
 manded of them this Question among others,  
 That whereas *Tbo. Staunton* had Judgement in  
 the Chancery, to recover against *Tbo. Gate* cer-  
 tain Lands and Tenements, and in execution  
 thereupon, yet *Tbo. Gate*, contrary to the judg-  
 ment and execution entred into the Lands;  
 where unto the chief Justices answered, That if  
*Tbo. Gate* had notice of the Judgment, then at all times  
 after such notice the Chancellor might compell  
 him by imprisonment. 2. R. 3. 9.

2. R. 3.  
*Judgment.*

*Notice.*  
*Imprison-*  
*ment.*

2. R. 3. 9.

A Feoffee upon trutt, was enjoyned to make  
 a writ to the Feoffee before a certain day, Sub-  
 poena rool. and he did not perform the Injun-  
 ction, and *Huffey* chief Justice of England, and  
 other Justices, and divers Apprentices said  
 utterly, that there could no *scire fac.* or other  
 process be awarded for the King against the party,  
 to levy the rool. because it is but a pain, and if  
 the Defendant make default in a *Suppna*, the  
 writ is not forfeited, for it is put in the writ but  
 only *interiorem*, but if the party make default, the  
 Chancellor may assesse a Fine upon him, accor-  
 ding to his discretion, and that assessement is a  
 judgment, and a *scire fac.* shall be awarded up-  
 on that, in such sort as it may be upon Recog-  
 nizance in *Cancellar.* 10. H. 7. 4. b. Const.

10. H. 7.  
*Injunction*

*Subpoena.*  
*Forfeiture.*

27. H. 8.  
Decree  
Right.  
Person.

Imprison-  
ment.

27. H. 8.  
Injunction  
Execution.  
Obligation.

Brooke.  
Heire.  
Executor.

Fleta.

10. Note that a Decree in Chancery doth bind the right of the party, but doth not only bind person to obedience, that if he will not obey, the Chancellor may commit him to ward untill he do obey, and that is all which the Chancellor may doe, but Judgement given in the King's Court, Common-pleas, and other Courts, do bind the right of the party, *per Knightly Serjeant, in Canc.* 27. H. 8. Judges. 1. & b. Judgment 2.

11. If an Injunction in Chancery be made That I shall not sue S. I. if I dye my Executors may sue him notwithstanding, for they are bound thereby: For if I be bound by Obligation that I shall not sue S. I. if I dye, my Executors may sue him, and it is no forfeiture of the Obligation, *per Fitzharbert Justic. in Canc.* H. 8. 16. consc. 1. and Brooke in abridging case, doth think it were hard, that the Chancellor should enjoin the Heirs or Executors, although they were expressed in the Injunction 27. H. 15. But at this day the form of Injunctions do by expresse words extend to bind the Heirs, Executors, Counsellors, Attorneys, and Solicitors of the party, saving that the Serjeants of the law do take themselves to be exempted by Warrant of their Oath, by which it seemeth also, that they should not be of Counsell with any Complaint in the Chancery.

12. Note that in the Book called *Fleta* which was made in the time of King Edw. the first, all the Justices, either at such time as they were in the Fleet, or else at such time as they inhabited in the street called Fleet-lane, it is thus written *Tot erant formulae Brev. quot sunt genera actionum, quia non poterit, quid sine bre. agere possit.*

que de libero tento suo quia non reueretur quis re-  
 ondere sine breui nisi gratis voluerit, & cum  
 fecerit quis ex hoc ei non injurabitur volenti  
 in & scienti non fit injuria.

13. By this it is to be collected, that the right  
 of possession of land, may be decreed in the  
 Chancery, in a sute commenced by the parties  
 consent, as appeareth also by a President follow- *Consent.*

14. *Agnis Lombard* being expulsed without  
 process out of Tenements in *Beverley* by *Thomas*  
*Lombard*, they submitted themselves to the De-  
 cree, Order, and Award of *Michael De la Poole*  
*Chancellor of Suffolk*, Lord Chancellor; who by wri-  
 ting under his Seal decreed, that she should have  
 the Tenements, rents, and arrerages thereof du-  
 ring her life, and an Injunction Subpoena was a-  
 ward to the tenants to pay the rents and ar-  
 rages accordingly, and to certain tenants  
 to whom *Tho. Lombard* had leased against the  
 will of *Agnis*, that they should not meddle any  
 more therewith, or else they to shew cause to the  
 contrary, in *decima quinta pascha*, also it was  
 decreed by the advice of *Robert Belknap*,  
*Chief Justice of the Common-pleas*, and of *John*  
*Waltham* Master of the Rolls and others, that  
 she should be put in full and peaceable seizin  
 thereof, whereof a Writ Patent by warrant of the  
 Council was directed to the Bailiffes, Alder-  
 men and Burgessees of *Beverly*, to put her in sei-  
 zin and possession, and to defend her therein,  
*Ans. Anno 9. R. 2. pro Agnet Lombard.*

## CHAP VI.

*Whether the Chancellor may intermit  
his power absolute, with the ordin-  
ry.*

8. E. 4.  
Privilege.  
Judge.

Temporall  
Conscience.  
And the  
Debtor  
was dis-  
charged of  
the execu-  
tion, and  
prayed his  
damage a-  
gainst them  
both, and  
the Master  
of the Rolls  
said, al-  
though by  
the Commō  
law dama-  
ges shold be  
adjudged  
against  
them both.  
*Audita  
querela  
Damages.*

**I**F an attachment of Privilege be sued against an Attorney in the Chancery, this attachment is in the nature of an action at the common law, and the Chancellor said that in that sute he had two powers, one as a Judge temporall, another as a Judge of Conscience. If it appear unto him upon the matter shewed the sute that there is conscience, he may judge thereof according to Conscience, but all the Judges said that he might not judge according to Conscience, because it is to be ruled according to common law, and if there be Conscience in the matter, then the party grieved may exhibit a bill thereof, and in that the Chancellor may judge according to conscience, 8. E. 4. 66. consc. Jurisd. 112.

2. One was bound unto I S. and I D. in a staple, and I S. released afterwards, I S. knowing thereof sued execution, the Debtor made an *Audita querela*, and upon the *scir. fac.* I S. and I D. being demanded in the Chancery I S. made default, and that was ruled to be a default in them both. Yet this being the Court of Conscience, we as well judge according to conscience, as to law; and it were against conscience that he which had no knowledge of the release should pay damages; But *Chief Justice* said, In this case they are and must be Judges only

According to Law, and the Master of the Rolls said *Conscience*.  
 he would be advised, 11. E. 4. 9. b. damma- *Common*  
*Law*.

3. One traversed an office in the Chancery, and  
 being at issue was sent into the Kings Bench to be  
 tried, & the party came and shewed, that the King  
 had granted the Land before, & so he should have  
 had a *scir. fac.* against the Grantee, wherefore he  
 pursued not his Traverse, and it was demanded  
 of the Justices if he might have a *scire fac.* out of  
 the Chancery upon the first Traverse, and they all  
 answered that he might, because that in pleading  
 a default of form should not in any case be pre-  
 judiciall in the Chancery, for it cannot be cal-  
 led a Court of conscience, if the act of a Clerke  
 in pleading should cause the party to lose his sute  
 and his expences.

4. In *Camera Scaccarij*, 14. E. 4. 76. traverse 14. E. 4.  
 Office, 39. & 6. *Jurisdic. 76*. Upon Petiti-  
 on made to the King, and by him delivered over *Traverse*  
 to the Chancellor to do right, appeared that the *of Office*.  
 Kings Tenant being Tenant in Taile, had  
 granted with warranty, Lands, and an advowson  
 to a College, and that the King had Presented by  
 colour of the Wardship of the Heir, contrary to  
 the grant, and the Incumbent pleaded for the  
 King, That the Heir had no Lands descended from  
 his Father, and that the Wardship was no Barre;  
 but because it appeared by divers Offices returned *Misplea-*  
 into the Court, that Lands to the value of 1000. *ding*.  
 marks were descended to the Heir, Therefore  
 the Court awarded in Conscience, That the Col-  
 lege should be restored to the Presentation with-  
 out tryall by Jury, that the same assize did dis-  
 cend. 43. ass. p. 21. Agr. 75.

Hereby it appeareth, That although the Chan-  
 cellor

cellor may not mix his absolute power with the ordinary concerning the right of the cause, yet he may somewhat use the same in matters of expedition of proceedings.

## CHAP. VII.

### *The form of the Pleadings.*

9. E. 4. **O**Ne sold certain Wool to I S. and I D. for 3. l. and I S. had all the profit thereof, and they were bound in severall Obligations; Afterward the Creditor sued I D. the surety, upon one of the Obligations, being 300l. who sued a Subpoena, and shewed in his Bill, that the Creditor was satisfied of a great part, and had given longer day for the rest, and exception was taken to the bill by Catesby Apprentice, because that the longer day, Complaintiffe alleged, that a great part of the whole summe was paid, and shewed not how much was paid, and it may be that the money paid was for other obligations and not for this; also he hath not shewen what day was given to I S. The Chancellor said, that it did not lye in the notice of I. D. what summe was paid, or what day was appointed; and therefore he cannot declare it, but it must appear upon the examination of the Defendants confidence, but he shall shew certainly such matter as lyeth in his knowledge.

*Obligation*  
*longer day,*  
*Uncertainty.*  
*the sum,*

Also in this Court it is not requisite that the Bill be all certaine, according to the solemnity of the Common law; for it is but a Petition.

*Notice the day certainty*

9. E. 4. 41. Subp. 12. et b. Confe. 3.

2. Note

2. Note, that the Chancellor said, that a man shall not be prejudiced by mispleading, or for default of form, but according to the verity of the matter; and the Chancellor must judge *secundum conscientiam, & non secundum allegat.* For if the Complainthee suppose by his Bill that the Defendant hath done him wrong, and the Defendant answereth nothing, yet if the Chancellor have knowledge that the Defendant did wrong to the Complainthee, the Complainthee shall not recover any thing, 9. E. 4. 14. *abp. 11. Jurisd. 51. & Consc. 26.*

3. Mispleading, nor default of form, shall not be prejudicial to the Chancery: *omnes* **Mispleading.** *offic. in Camera Scacc. 14. E. 4. 7. b. traverse Office 39. & b. Jurisd. 76.*

4. A Subpoena was sued against T. Tate, and before answer Tate exhibited a Bill against the Complainthee, to have an estate in the same land, and because his Bill came in last, he was forced to put in his answer to the first Bill, and so they were at issue; And afterwards it was shewed to the Court, that Tate's Bill did vary from his own answer in two points, which were the ground of the matter. And it was holden by the Chancellor, by the advice of the Kings Serjeants, that the answer should stand, and it was notwithstanding the Bill, and it was objected, that if the matter were found for Tate, then he should recover upon his Bill, but now he cannot do so, because his answer is directly contrary. Whereunto the Kings Serjeants answered, That Tate might be suffered to amend his Bill, according to his answer, because he was sworn upon his answer, but not upon his Bill. *quod nota 14. E. 4. p. 15.* **Answer.** **Variance,** **Amend.**

16 E.4.  
Answer.

5. A Bill was abetted for insufficiency of matter, and the Complainciffe shewed new matter, and the Defendant was awarded to answer to it *per Cur. Cancellar.* 16. E. 4.

16 E.4.  
Answer.

6. If a *sub pœna* be sued against 4. Executors and one of them doth onely appear, he shall not be forced to answer without his Companions, but *Markeham. Capit. Iustic. Angl.* But *Roger Apprentice* said, that he might answer alone if he would, without his Companions, but shall not be compelled thereunto. 8. E. 4. 5. *Brooke Con. c. 15.*

8 E.4.  
Executors  
Answer.

## CHAP. VIII.

*What Costs and Damages shall be awarded in the Chancery.*

43 E.31

Damages.

1. **N**Ote that, where a Woman is onely dowed by reason that her first Dowry was recovered from her she sha'l recover no damages, for damages are not awarded in the Chancery *per Cur. Cancellar. in præsen. Iust.* 43. *Ap. p. 32. & 43 E.3.2.* Damages 195. *& B. fa. 161.*

*W. Fishlake* exhibi ed a Petition to the King against the Prior of *windbam*, that his ship sailed to *Lon.* was assailed by Enemies of *France*, that he & his Mariners for fear fled to the land by boat to *Hapsburgh* in *Norfolk*, and the ship being spoiled by them was cast up at *Hapsburgh* in the Priors land, who seized the same as wreck.

The King delivered the Petir. by writ to the Admiral, willing him to do justice, who proceeding therein upon sute of the Prior made to the King was commanded to certifie his proceedings before the King and his Council, and to warn the parties to appear at a day certain in the Chancery, where upon hearing, it seemed to the Justices and Kings Serjeants, and other Lawyers being there, that the ship, goods, and chattels ought not to be accounted wreck, and judgement was given that *William Fishlack* wreck, should be restored thereunto, and to his damages, costs, and expences which he had sustained Costs. by the Priors default in the prosecuting, and that he should satisfie the Prior and his servants for their reasonable costs imployed in saving the ship and goods. *Clauff. An. 5 R.2. R.6. pro W. Fishlack de Bacton.*

It was enacted *Anno 17 R.2.* that where people be compelled to come before the Kings Council, or in the Chancery by writs granted upon untrue suggestions, the Chancellor after that such suggestions be found and proved untrue shall have power to ordain and award damages after his discretion, to him which shall soundly be troubled, *Stat. Anno 17 R.2. c. 6 accusation 8.* 17 R.2  
Damages.

It was enacted *Anno 15 H.6.* that no writ of *Stat. 15. sub poena* shall be granted till Surety be found *H.6.* to satisfie the party grieved for his damages and Surety. expences, if the matter cannot be made good which is conteined in the bill, *Stat. Anno 15 H.6 c. 4. accusac 9.*

5. It was used since these Statutes to enter the Sureties upon the bill in this form, *Plegii de prosequend. T. W. de H. in Com. Midd. Ar. &*

*J. K. de B. in Com. Midd. Ar. or else in this form, Memorand. qd. 23 die Januar. An. R. 2. H. 6. 34. E. F. de paroch. de S. London Fuller, & T. J. de London Yeoman coram ipso Domino R. ge in Cancellaria sua personaliter constituit monu-  
 ceperunt pro praed. querent. quod si ipse materiam in hac supplicatione content. verum probare non poterit tunc ipsi omnia damna & expens. quae sub poena dict. d. f. in hac parte sustinebit per considerationem Curiae & satisfaci-  
 et juxta formam statuti inde editi, but this is now neglected, Pe. ic. in Canc. de An. H. 6.*

*Damna,  
 Expenss.*

*7 E. 4.  
 Bill insuf-  
 fic,*

*Costs,  
 Damages,  
 Bill untrue*

6. Note if a Bill be exhibited and the Defendant demur upon the insufficiency thereof, and by the Court the bill is awarded insufficient, in that case the Def. shall have no costs or damages by the statute, because the statute giveth the damages where the bill is found true or untrue, but in this case the truth is not tried, 7 E. 4. 14. Dam. 44. b. Costs 19. & b. Damages 163. per Cancellariam & Justic. utriusque Banci in Camera Scaccar.

*7 E. 4.  
 Grant to  
 use costs.*

7. Note that the grantee of Lands, or Goods upon trust, is not compellable in conscience to sue or defend, but onely at the costs and charges of the grantor, 7 E. 4. 29.

*11 E. 4.  
 Audit. que.  
 Damages.*

8. It seemeth that if one sue execution upon a statute staple, where he hath released the debtor before, and the debtor sueth an *Audit. quer.* against him to avoid the Execution, and the creditor maketh default, he shall pay damages, 11 E. 4. bc. fo. 46. a. casu secundo.

*23 E. 4.  
 Injunction.*

In an action of Trespass, the Plaintiff recovered by verdict, and the Plaintiff shewed in the King's bench, that the Chancellor had awarded an Injunction against him, whereby the surety

not long delayed, and now (depending the Injunction) he prayed his Judgement in the Kings Bench, and it was given, but the Court would not afford any damages for the Plaintiff's vexation in the Chancery, by the Injunction, in *Banco Regis 22 E. 4. 37. b. Damages 138. & b. Judgement 86.* Kings Bench, Judgement Damages.

10. In an Action of Trespas the Defendant 21 E. 4. was found guilty by verdict, and the Plaintiff shewed in the Common place that the Defendant had sued a *sub poena* in the Chancery, and had obtained an Injunction, that he should not proceed at the common Law till the matter in the Chancery were tried, and how by means of the sure in the Chancery the Plaintiff had spent ten Marks, and now the Injunction is dissolved, the Plaintiff dismissed to the common Law, Common place, Injunction and therefore he prayed the Justice to increase the costs because of this vexation. And Brian the ch. Just. awarded that the Plaintiff should recover three pounds for his costs, besides his damages in *com. banco, 21 E. 4. 78. b. consc. 22. & b. costs.* Dismission

CHAP. IX.

*Reformation and Reversal of Judgements and Decrees made in the Chancery.*

37. H. 6.  
Decree,  
Parliament  
Error.

Brook.

Petition,

Judgement  
Reco'd.

27 H. 8:

Decree,  
the same  
Court,  
Parliament

Order,  
good cause.

1. **N**OTE that upon a Decree made in the Chancery by *sub pœna*, the party may have a writ of error in the Parliament to recover the same if it be erroneous, in such sort as he may have to reverse Judgements erroneously given in the Kings Bench *per Chock Serjeant, 37 H. 6. 13. Twissd. 53. & error 95.* But note that Brook abridgeth the case, that *Prisot* the chief Justice was of the contrary opinion, which is not to be so collected by the book, but by implication; yet may it seem that no writ of error doth lie, but a petition to the Parliament in the nature of a writ of error, but *Prisot* said that Judgements in the Chancery upon *scire facias* to repeal Patents and pleas of persons priviledged are reverfable by Parliament, because they are Judgements, but the decrees are not.

2. *Cholmly* Serjeant said, if a decree be made in the Chancery, that the Chancellor hath no power to reverse that decree in the same Court, but it must be redressed in the Parliament, for Judgement given in the Kings Bench, Common-place or Exchequer, are not reverfable in the same Court but in a higher Court.

But *Knightley* Serjeant said, that a decree was an Order taken by the Court for the time

the which upon good causes shewed may be redressed in the same Court, but *Devissall* Serjeant said, that if it might be so, there would be an incessant confusion of all causes, wherefore the Chancellor cannot reverse an absolute Decree, but he may reverse a Decree which is made with a *quousque*; for an absolute decree is much like a definitive sentence given in the spiritual Court, which cannot be redressed in the same Court, but by application into a higher Court; and the Kings Secretary interrupted him to speak any further of the authority of the Chancery. *In Cancell. 27 H. 8. 16.*

In a writ of error to reverse a Judgement of petition in Chancery, the Defendant took exception that the Judgement given in the Chancery might not be reversed in the Chancery, being all one Court, but in the Parliament. *Et non allocatur exception. per Cur. Cancell. 42. ass's. p. 22. b. error. 131.* It seemeth that this was not properly a reversall of the petition, but rather and is like to the case ensuing.

The Lord Chancellor grant a patent of land and after make a patent to another of the same land, the second patent is revocable in the Chancery by *scire facias*, but not by writ of error, for a Court may reform, but not reverse their own judgements, 2 R. 3.

A Statute Merchant was acknowledged in the Chancery, the money payable *Anno 16.* and the party sued execution, and his writ supposed the same to be payable, *Anno 14.* and by this sute the Feeoffee was put out of power, and he sued a writ of error in the Kings Bench, and it was awarded that he should be received to the sute, 18 E. 3. 25. error p. & 17. ass's. p. 24.

And

13 Eliz.  
common  
Law.

And *Plowden* reciting the case saith, that  
upon sures in the Chancery according to the  
order of the common Law there be error, that  
shall be reformed by a writ of error in the  
Kings Bench, which is a higher Court, 13 El.  
*Com.* 393.

The



## The Second Part of the Absolute Power.

### CHAP. I.

#### *Of Lands.*



If two Copartners bring a *6 E.4.* Formidon, and one of them by Covin between the Tenant and him will not joyn with the other in a true Declaration, the other may compell her by *sub pœna* to joyn

in the true Declaration, for else the Action would abate. *per Moyle Justice & Ienaey Sergeant, in Co. Ba. 6 E.4. 10. b. consc. 12.*

2. If two men have a wood jointly, and one of them selleth the wood, and keepeth all the money to himself, his fellow hath no remedy by the Law, for as when they took the wood jointly, they put each other in trust, and were contented to occupy together, so the Law suffereth them to order the profits thereof according

ing to the trust that each did put in other, and yet if one took all the profits he is bound in  
*Conscience* conscience to restore the half to his fellow; for as the Law giveth him right onely to half the land, so it giveth him right onely in conscience to the half profits; and yet it cannot be said that the law is against conscience; for the Law willeth not that one shall take all the profits, but leaveth it to their conscience, *Lib. Doct. & Stud. cap. 19.*

*Law.*

*Doct. & Stud. eldest son.*

*Gravel-kinde all children. Law, Custome,*

3. In many cases conscience shall be ruled after the Law; as the eldest son shall have his fathers land by conscience, as he shall in law; and so he shall in law, and so in Burgh English, the youngest son shall enjoy the land both in law and conscience; and in Gravel-kinde all the sons and daughters shall inherit together, and there can be no other reason given why it should be so in conscience, but because law or custome is so, *lib. Doct. & Stud. 2. c. 15.* for divers good causes upon that ground.

*Pre'sent in Sect. Tent. curtesie. claim, fee-simple.*

4. *Tho. Parrick* and *Agnes* his wife exhibited a bill, conteining that one *Beatrice* whose hie *Agnes* is, was seized, and took to husband *Thomas Bradley* preient in the Court, and dyed, *Bradley* continued as Tenant by the curtesie of *England*, untill now of late he claimeth and publisheth that he hath fee-simple, and withheld the Charters; wherefore they prayed that he might be examined what estate he claimeth, and to be recorded, and to know ledge what Charters he hath, & to deliver them to the complainants defendant *D' son: sum est à curia quietus sine die per consi. car. eo qd materia in hac supplicatione contenta non est sufficienti ad penendum ipsam defend. ad examinat. super eundem*

*exadem petition. Pet. in Canc. 20 H.6.* the defendant hath authority by law to keep the Charters, and although in words he claimeth fee-simple, yet because it is not alleadged that he did not any act to the dis-inheritance of the complainants, therefore it seemeth he was dismissed. *Dismission*

## CHAP. II.

### *Of Lands in use or trust.*

**L**Ands in *Lond.* were devised to the devisors son and three others in fee, and that one of them should have the profits during his life, the devisor dyed, the son and heir sued a *sub p.* against the two others, to compell them to release unto him, because the use of the land ought to be in him after the death of the pavor, and it was thought reasonable *per omnes Justic. in camera Scac. 3 H.6. devise 22. & 8. feofment: al uses 49.* So it is if the same had been done by Feofment. *3 H.9. Rem. of use use for life Release.*

2. One made a Feofment upon confidence, and afterwards declared his will to the Feoffee that one of the daughters should have the land after his decease, and after that he came to the Feoffee and told him that his said daughter would not be married by him, and therefore he revoked his Will, and willed that his other daughter should have the land by conscience. *31 H.6. Revocati- on of will.* *Laisson*, when he made his first Will, the first daughter had presently an interest in the land, which

*Revocation of use.  
quid pro quo.*

*fall into poverty.*

*Special cause.*

*Son born.*

*Felon after feofment.*

*Felon,  
15 Eliz.*

*3 H.6:  
use after feofment.*

which he would not defeat; as if one make a Feofment to the use of a stranger, he cannot afterwards revoke that use. *Illingworth*, there appeareth not any cause why the first daughter should have the land; and therefore seeing the Feoffor had not *quid pro quo*, it is no bargain, but of his meer will which he may by good conscience change, as if the Feoffor had afterwards fallen into poverty, he might with good conscience compell the Feoffee to re-feoff him again, *Prisot ch.* Justice of the Common-pleas, when the Re-feoffor had once declared his Will, and willed the land to his daughter, the Feoffee standeth presently subject to the will of the daughter, and is discharged of the Feoffee; and such a Will is as strong as a Feoffee, which is annexed to a Livery of Seizin, *Fortescue* chief Justice of England, the Feoffor may have his will, if there be special cause, otherwise not; as if after the first Will the Feoffor had a son born he might well have changed his Will, and given it to his son and heir, for there is a reasonable cause of his claim, and so it is if the daughter had become a Felon, 35 H.6: *sub pœna*.

3. *Stac. consc.* note that the better opinion is conceived to be, that he may revoke the first Will, 15 Eliz. *Dyer*. 3. 25.

4. Note, it was agreed, if any infeoff another, he may declare his Will unto him afterwards, and appoint the use to whom he will, 31 H.6. *sub pœna* 23. *Stac. consc.*

5. If I infeoff one to perform my last Will and himself a stranger, I have no cause of *sub pœna* against the Feoffee, but I may sue my first Feoffee and recover in damages for the value

ue of the land, *per Teluerten & Wilby, Clericis Enfeoff a*  
*Rotulorum*, and this is meant where the second stranger,  
 Feofment is made *bona fide*, in which cause I second  
 ave no remedy for the land, and so it was ad- Feoffee,  
 udged in the Cardinal of *Winchesters* case, but Damages,  
 f the second Feofment had been also upon *bona fide*,  
 rust, then I might recover the land by *sub pœ-trust*,  
 a against the second Feoffee, 31 H.6. *sub pœ-*  
*na 19. Stach. (ub pœna.*

6. If I make a Feofment upon trust that the 33 H.6.  
 Feoffee shall infeoff my heir when he cometh Enfeoff  
 o full age, and the Feoffee infeoffeth a stranger strangers,  
*bona fide* to the intent to dis-inheric my heir, *bona fide*,  
 here the trust is detained, and the heir is with- second  
 out remedy against the second Feoffee by *sub feofment*,  
 or otherwise; but if the Feoffee had returned *refuse to*  
 the land himself, and refused to infeoff the heir *infeoff*.  
 at his full age he might have compelled him  
 hereunto by *sub pœna per Dunby Just. in com.*  
*anco, 33 H.6. 15.*

7. Richard Frank made Feoffees to the use 33 H.6.  
 of the last Will of him, and Agnes his wife, *pet. in law.*  
 and they dyed, having issue John and Izabel;  
 John was outlawed of murther, and also deli-  
 vered to the Abbot of *westminster*, as a Clerk  
 attainted for robbing a boy called a! (*Monstrat*)  
 out of the Church of the Prioress of *Clerken-*  
*well*; and lastly was indicted and outlawed for  
 felonies and Treasons, and during his life  
 Izabel sued a *sub pœn.* against the Feoffees to be  
 seoffed of the land, as next heir to the land, *Outlawed,*  
 the Feoffees upon their Oaths confessed the *clerk at-*  
 trust, wherefore it was decreed by the Court, by *tainted,*  
 advise of John Fortescue Knight chief Justice *outlawed*  
 of the K. Bench and divers other Justices and *of trea-*  
 erj. that the Feoffees should execute an estate *son.*  
 to

next heir: to Isabel and her heirs, *qd nota petic. in casu*  
*Ann. 33 H.6. 2 pts.*

37 H.6.  
 Refuse to  
 infeoff,  
 Imprison-  
 ment;

8. If the Feoffee upon trust do refuse to per-  
 form the trust by denying to re-infeoff the  
 Feoffor, he shall be compelled thereunto by *sub*  
*pæna*, and decree and imprisonment, *per Linc.*  
*Ser. 37 H.6. 13.*

37 H.6.  
 Will,  
 2 Feoffees.

9. One having four Feoffees seised to his  
 use, sold his land to *J. S.* and said to two of  
 his Feoffees, that his Will was that they four  
 should make a Feofment unto *J. S.* according-  
 ly, which two Feoffees notified his Will unto  
 the other two, who refused to joyn in the Feo-  
 fment; whereupon the first two alone made a  
 Feofment to *J. S.* of their parts, and after-  
 wards the Feoffor sold the lands to *J. D.* and re-  
 quired those two Feoffees which refused before  
 to infeoff *J. D.* who did so accordingly, and

Notice.

*J. S.* sued a *sub pæna* against the two Feoffees  
 which refused, and because the two Feoffees did  
 but only give notice to the other two Feoffees  
 of the Feoffors Will, and did not tell them that  
 the Feoffor had commanded them to infeoff

command-  
 ment.

*J. S.* and without commandment they were not  
 compellable to make the Feofment, therefore  
 the two Feoffees which so refused were dismissed  
*per can. & omnes Just. 37 H. 6. 35. sub pæna*  
*b. consc. 5.*

37 H.6.

10. If the Feoffor do send his servant to his  
 Feoffees commanding them to make estate ac-  
 cording to his Will, the Feoffees are not  
 bound to make a Feofment without specially  
 proving his Will *per plur. Instic. 37 H. 6.*

37 H.6.  
 refuse to  
 take.

*sub pæna 1 b. consc. 5.*

11. One willed that his Feoffees should make  
 an estate for life to *J. S.* the Remainders. to *J. D.*

fee, I. S. refused to make the Estate for life, I. D. may compell the Feoffees by *sub pœna*, to make an estate in rem. unto him after the death of I. S. per Tenney Serj. & Fincham apprentice, and Fincham said, that the Feoffees ought to make an Estate to the heir of the Feoffor during the life of I. S. if I. S. did refuse the rem. of I. D.

Remainder.

12 And I. D. may compell the Feoffees by *sub pœna* to grant the rem. in the life of I. S. or else by the refusall of I. S. he should lose his rem. otherwise it is if a man devise lands by his Testament to I. S. for life, the rem. to I. D. further if I. S. refuse, yet there needeth no *sub pœna*, because he may enter by the law by force of the Testament, 37 H. 6. 36. *sub pœna* 16. *consc. 5.*

Refusall by Tenant for life.

Testament

13 If any Feoffee in trust be disseized, I may have *sub pœna* to compell him to bring in assize. Assize against the Disseisor per Moyle & Danvers Justice in *communi banco*, 2 E. 4. 2. b. *consc. 5.*

Disseizin in assize.

14 If I be bound by obligation to I. S. 2 E. 4. to the use of I. D. that I shall infeoff I. D. for certain lands, if I do offer a Feofment unto I. D. refuse to take, and do refuse to receive, the obligation is thereby discharged, but I. D. may have a *sub pœna* to compell me to infeoff him notwithstanding per Danby Capit. Justice de *communi banco*, 2 E. 4. 3.

Obligation refuse to take.

15 If any Feoffee upon trust infeoff a stranger, and do sell the land to him for money, yet if he give knowledge unto the stranger, that he himself had it onely upon trust, I may compell the stranger by *sub pœna* to perform my VVill, 5 E. 4. 76. *Feofments at use* 32. *sub pœna* 2.

5 E. 4.  
Youngest  
son.

16 If Tenant in Burgb English infeoff one to the use of the Feoffor and his heirs, the youngest son shall have a *sub pœna* to recover the land but not the eldest, 5 E. 4. 7. 5. Feofments at use 32. *sub pœna* 2.

5 E. 4.  
Mothers  
side,  
heir of the  
fathers  
side.

17 If one seized of land which is descended unto him from his mother do make a Feofment upon trust, and then die without issue, the heir by the mothers side shall have a *sub pœna* to recover the land, not the heir by the fathers side, 5 E. 4. 7. 6. Feofments at use 32. *sub pœna* 2.

5 E. 4.  
Remain-  
der,  
  
Tenant in  
tail,  
declare  
Testament.

18 If a Tenant in tail (the remainder being a stranger) do make a Feofment to his wife, and die without issue, having declared his Will, the *sub pœna* belongeth to such person as is limited by his Will, and not to him that hath the remainder, but if he have declared no Will, then he in the remainder should have had the *sub pœna*, *quare* E. 5. 47 *sub pœna* 26. Feofments at use 32. But Brook thinketh that he in the remainder shall have no *sub pœna* in neither case, because he may have his remedy at the common Law.

Common  
Law.

5 E. 4.  
Husband  
and wife.

19 If the Husband and the Wife be seized in the right of the Wife, and the Husband make a Feofment, although he declare no Will, yet the Wife shall not have the *sub pœna*, because as Brook thinketh;

no consid.  
use not  
expressed.

20 When a Feofment is made without any consideration and no use expressed, the Feofment shall be intended to be to the use of the Feoffor, and his heirs; and also the Wife may have her *cui in vita* by the common Law, 5 E. 4. 76. Feofments at uses 32. *sub pœna*.

21 If a man have issue, a Son and a Daugh- 4 E. 4.  
ter by one Wife, and a Daughtre by another Half blood,  
Wife, and maketh a Feofment to his use, and  
dieth; if the Son do take the profits, and die, Take pro-  
his Sister by the whole Bloud shall have the fits,  
land by *sub pœna*, and the other suffer nothing,  
because the rule, that *Possessio fratris de feod. Possessio*  
*simplici fecit sororem esse heredem*, doth extend *fratris*.  
to uses, as well as to lands, 5 E. 4. 7. *sub pœna*  
3. b. Feofment al uses 33. & b. *descend.* 36 & 4 E. 6.  
Com. 4 E. 6. 58. per Mountague capit. *Justic. de*  
*communi banco*; and if the Father had devised  
his land to a stranger, this would have been no  
*possessio fratris*, because the freehold of the use  
was in the stranger; but if he had devised it on-  
ly for years, it would have been a good *possessio*  
*fratris*, 5. E. 4. 7. *sub pœna* 36. *Consc.* 12. & by  
*descend.* estate for  
life,  
for years.

22 If I. S. make a Feofment in trust, and 5 E. 4.  
be afterwards attainted of Felony, the lord of *Attainder*,  
whom the land is holden shall not have the *Felony*,  
*sub pœna* by *Escheat*, 5 E. 4. 7. B. Feofment al *Escheat*.  
use 34.

23 Note that the King cannot be infeoffed 5 E. 4.  
to any other mans use although it be so ex- 7 E. 4.  
pressed, neither doth any *sub pœna* lie against *King*  
him, but the Feofment is good, and the limi- *use void.*  
tation of the use void, per *Markham & Brian*  
*capit. Justic.* 5 E. 4. 7. 7 E. 4. 17. *Office* 2.

24 One being infeoffed to the use of a Wo-  
man, she took a Husband, and the Husband  
sold the land to a stranger, and the Woman re-  
ceived the money, and the Feoffee at their re-  
quest infeoffed the stranger, the Husband died,  
and the Wife brought a *sub pœna* against the  
Feoffee, who shewed the matter, and the Wife

7 E.4.  
Husband  
and wife.

Receive  
money.

*cui in vita*  
Coverture.  
Prison,  
Satisfact.

Feoffee,  
Notice.

7 E.4.  
Plead  
Actions,  
costs.

Dilatories.

8 E.4.  
Hen.

demurred; *Starkie* Apprentice, if the Husband make a Feoffment of the Wives land, she shall avoid it by a *cui in vita*; and so if the Husband do sell the Wives use in the land, this Sale shall in conscience be said the Sale of her Husband alone, and not of them both, and therefore the *sub pœna* doth lie; which saying was affirmed of all the Justices of both the Benches; and the Chancellor said, that all which a Woman Covert doth shall be esteemed to be done for fear of her Husband, and the receipt of the money by her is not material, because she cannot have the free disposition thereof, and the Complainiff prayed that the Defendant might be committed unto Prison untill he made satisfaction; and the Chancellor said, that the Complainiff might have a *sub pœna* against the stranger which bought the land; but *Yelverton* said, that she might have a *sub pœna*, if the stranger had knowledge of the wrong and deceit done to her, but otherwise not. The Chancellor answered, that the stranger knew well that she was a Woman Covert, *in cam. Scacc. 7 E.4. 14. Sub pœna 3. B. consc. 13. b. Feoffm. at use 4.*

25 Note that a Feoffee of trust is bound by conscience to plead all Pleas, and to maintain such actions for the land as the Feoffor will have him, but it shall be at the Feoffees charge, *per omnes Justic.* but it is doubtfull whether the Feoffees be compellable to plead dilatory Pleas, 7 E.4. 29. *sub pœna 9. br. Feoffments at uses 38. & 6. consc. 27.*

26 Note that *Coke* Justice said, that he sued once a *sub pœna* against the heirs of a Feoffee upon trust, and the matter was long debated.

and the opinion of the Chancellor, and of the Justices was, that the *sub poena* did not lie against the Heir, whereby he was put to exhibit his Bill in the Parliament, 8 E. 4. 6. *sub poena*, 8 B. consc. 16. Note that it must be intended Parliament that the Heir had not the land, but that the land was sold before by the Feoffee to a stranger; for if the Heir had the Land, he is liable to the trust as well as the Feoffee.

27 If I do lend money to I. S. and he in- 9 E. 4. feoffeth me of his Lands, and it is agreed that Payment, I shall take the profits thereof untill he have Tender, payed me: if I. S. do pay the money, or tender Refuse it unto me, and I refuse to re-infeoff him, he to re-in- may compell me by the *sub poena*, per Pigat Ser. feoff. jeant. 9 E. 4. 25. Bar. 100.

28 It was holden in the Chancery, that if any Feoffee upon trust do infeoff any other which knoweth of the trust, I may have a *sub poena* against them both; but if a stranger knowing the trust had done a Trespass upon any Feoffee, I might compell my Feoffee by 11 E. 4. 8. *sub poena* to sue him, and to recover Damages, 13. consc. 17. I shall have no *sub poena* against the Trespassor, but onely against my Feoffee, because he might lawfully procure his own discharge, but the Reporter thinketh that the Trespassor is punishable by *sub poena*, as well as the Feoffee, 11 E. 4. 3. *sub poena* 13. consc. 17.

28 A *sub poena* was sued against two sons 14 E. 4. and heirs of gavel land to compell them to Heirs, make an Estate of the land of which the gavel Complainthiff had infeoffed their father and o- kinde, thers to his use, of whom their father was the common Survivor, the Defendant said, that the com- voice. mon voice of the Country is, that the Feof- ment

ment was to the use of the Complaintiff, and of his VVife, and of the Heirs of their two Bodies begotten, who have Issue, therefore they prayed a VVrit to warn the Issue, and upon the VVrit the issued appeared, and shewed that he was under age, and prayed that the matter might stay untill he came to age, and the Chancellour by the advice of Laicon and Littleton Iustices awarded that the matter should not stay, because he was not seized of the Land by a Discent, wherefore the Issue by his next Cousin declared his Title, 14 E. 4. Age 20.

Age,  
Discent,

Next Cousin.

14 E. 4.  
Heir,

30 Note that a *sub poena* doth lie against the Heir of the surviving Feoffees, 14 E. 4. Sub. 14.

31 A *sub poena* was brought against three Feoffees upon trust, to compell them to execute an Estate to the Complaintiff, one of them said, that the Complaintiff made a Feofment to the other two in his absence to the behoof of all three, and he died never agreed to the Feofment, and the Land is holden of him, so that he cannot execute an Estate but that he shall extinguish his own Seigniority; and therefore he disclaimed in the Land, and it was allowed to be a good answer, *per curiam Cancellarii*, 16 E. 4. 4. sub poena 18.

Agree.  
Lord.

Extinguishment.  
Disclaimes.

17 E. 4.  
Award,  
Release.

32 If I and another do submit our selves to an award, and it is awarded that I shall cause my Feoffees in trust to release to the other being in possession, I may compell my Feoffees by *sub poena* to fulfill the award *per omnes Iustices in communi banco*, 17 E. 4. 4.

Testament.

33 A VVoman made a Feofment upon confidence, and afterwards took a Husband, and in her Death-bed she made Testament that

her

her Feoffees should make an Estate to her Husband, and to his Heirs; the VWoman died, and the Husband sued a *sub poena* to compell the Feoffees to perform her Testament, and it was ruled that the Testament was void, and that the Feoffees were not compellable to perform the same, for Law and Conscience do allow nothing to be good which is done by VWoman Covert concerning her Inheritance, except it be by Fine leavied where she is openly examined in the Court, for this Testament would be a Disinheritance to her Heir, but she may make her Testament of Goods, and make Executions by consent of her Husband *per cancell. & omnes Justic. uno tantum excepto.* And *Yavasor* shewed to the Court that Anno 7 E. 4. a VWoman Covert having Feoffees upon trust, she and her Husband sold the Land, and she received the money, and afterwards the Husband died, and she sued a *sub poena*, and it was adjudged to be a good sure, 18 E. 4. 118. *consc.* 28. b. *Testament.* 13.

*Coverture.  
Fine.*

34 The custome of Kent is, that an Infant 20 E. 4. of fifteen years may sell his Land, and the Custome, case was that an Infant made Feoffees upon Infant, trust, and afterwards being above fifteen years Sale. old he willed the Feoffees to make an Estate thereof to him and his VVife in tail, and the question was whether they were compellable by *sub poena* to do it or no, and it was holden that the Feoffees were not compellable, because the Infant cannot will his Land by the custome, for the custome is onely of Sale, and is always to be construed strictly, according to the very words also at the Common Law, such a VVill Custome made by the Infant of Lands is void, and so it is Strict.

in conscience *per Littleton Tenney & omnes suos Justic.* 21 E. 4. b. Testament. 17.

21 E. 4.  
Burgh  
English,  
youngest  
son,  
Gavel-  
kinde.

35 Note in Burgh English land where the youngest shall inherit, if the Father make a Feofment upon trust, the youngest son shall have the use, and the *sub poena*, and so it is of Gavel-kinde land, where all the Brothers do inherit *per Dig. App.* 21 E. 4. 24. b. Testament. 17.

22 E. 4.

Heir,  
Discent,

36 Hussy chief Justice of England said, that when he came first to the Court which was about thirty years past, it was holden by all the Court that if one infeoffed another of trust which died seized so that his Heir were in by Discent, no *sub poena* should lie against the Heir, for the same reason a *sub poena* might be against the Heir after two Discents which were inconvenient, but the Chancellor said that there are Presidents in the Chancery that a *sub poena* doth lie against the Heir in *Cam. Scacc.* 22 E. 4. 6. b. consc. 23.

President.

7 H. 7.  
Notice,  
Feoffee.

37 If a feoffee upon confidence make a feofment to one that hath knowledge of the confidence the feoffer shall be restored again in the Chancery, otherwise it is if the purchaser had no knowledge of the confidence *per Capel.* 7 H. 7. 12. *sub poena* 18.

5 H. 7.  
Infant,  
Offices.

38 The Feoffees upon trust of an Infant may grant all ordinary Offices for term of life, as Steward, Bailiff, and Receiver, and they shall have allowance thereof, in their Accounts when they are called to account in the Chancery, but they cannot grant any fees for term of life, without the assent of the Heir when he is of full age *per Hussy & Brian cap. Just. Ang.* But Kebble Serjeant said, that if the Feoffor were

Account,  
Fees,  
assent.

able and willing to be Bailiff or Receiver himself, or if that there were need of any Defence, Steward, Bailiff, or Receiver, then he might Sutes. appeal the Grants by *sub poena*, also it was Allowance. agreed that the feoffees might defend the Land in all lites with the profits thereof, and should have allowance thereof in Counsel, 8 H.7. b. *Feoffments at uses* 12.

39 Note it was adjudged that a Woman 10 H.7. Covert Executrix might make sale of her lands *Coverture*, in her Husband, and that it is a good Bargain, and the feoffees upon trust are bound to make a *Execu-* feoffment accordingly; and in this case because *trix*, three feoffees did the contrary, they were com- *Sale*, mitted to the Fleet, 10 H.7.20. This is to be *Fleet*. understood, where the Land was devised to the Woman being Executrix to the intent to be sold for the performance of the Will of the Testator.

40 Certain feoffees were seized to the use of 10 H.7. Sir Richard Rose for life, and afterwards to the use for use of others, and the feoffees made a feoffment *life*, in fee to Sir Richard Rose, the question was whether Sir Richard Rose had forfeited his Estate or no, and Hussy and Brian chief Ju- *Forfei-* stices agreed that it was no forfeiture by the *ture*, common Law, for no mans Reversion is dis- *Disconti-* continued thereby, otherwise it is if Tenant for *nuance*, life of land had made a feoffment to a stranger, *Reforma-* for that were a forfeiture, and the Chancellour *tion*, said, that in the first case it was no forfeiture in conscience, but he would reform so much as was amisse done and no more, and so it had oftentimes been ordered before the Chancellour, 10 H.7.2.

41 A feoffee upon trust was seized by a 10 H.7. *sub*

Injunction,  
Infeoff.

Refeoff  
Die seized.

4 H.7.  
Refeoff.

15 H.7.  
Testament,  
sell.

Special-  
tie named,  
Debts,  
Creditors.

*sub poena* by the Feoffor, and the feoffee was joyned that he should make an Estate to the feoffor before a day certain *sub poena* 100. *in Caus. 10 H.7.4.*

42 The Heir of Co. qu. use shall have after the death of his father the issues and profits of the Lands, as if his father had died seized thereof, and he may compell the Feoffees upon trust by *sub poena* to infeoff him, and shall have all advantages, as if his father had died seized *in Camera Scacc. per Wood Serjeant, 13 H.7.7.*

43 If the Feoffees upon trust will not infeoff the Feoffor, he may compell them by *sub poena in communi banco per Brian cap. Justic. de communi banco & Danvers Justic. 14 H.7.19.*

44 One having feoffees in trust, devised by his Testament, that his Feoffees should sell the Lands, the Feoffor died, the Feoffees infeoffed others to the first use, the second Feoffees may not perform the Will, but the first Feoffees may, and the second Feoffees may do it, because there is a kinde of use in I.S. seeing he is specially named, and he may compell them to sell unto him, and if the Will were that the Feoffees should sell his Lands to pay his Debts, the Creditors may compell the feoffees to sell it, but if he had willed that the feoffees should sell the Land for money to be distributed there no man can compell them to make the Sale *per Fineux cap. Justic. & Read & Tremains Just.* If the Will were that his Executors should sell it, though his Executors refuse to administer, yet the ordinary Administrator may not sell it, but the Executors themselves may, notwithstanding

...ing the refusall caule the uses not testa- Distribu-  
 ...ory *per Finenz cap. Insic. Angl. Read & red,*  
 ...ail *Insic.* And if he will that his Land Executors  
 ...be sold, and shew not by whom, his Exe- refuse  
 ...ors shall sell it, and not the feoffees, for the Admini-  
 ...utors have the greatest confidence put in stration,  
 ...for they have the disposition of the mo- Ordinary  
 ...for which it is sold *per Finenz cap. Insic. Admini-*  
 ...gl. *Read & Tremaine & Frowick Serjeant.* strator,  
 ...if the Will be that the Land shall be sold, Testamen-  
 ...Heir shall take the profits untill it be sold tory Exe-  
 ...ofdem in Banco Regis, 15 H. 7. 12. b. Feofm. cutors,  
 ...use 12. Execu-

45 If one having feoffees upon trust do tors,  
 ...ke his Testament that they shall have an Heirs.  
 ...ate to I. S. and dieth, if the feoffees infeoff 14 H. 7.  
 ...ers to the first use, the second feoffees may Testament,  
 ...ke the Estate by *Kingsmell Serjeant*, 14 H. Speciality,  
 ...33. 23. Feofment, at use 12. named fe-  
 46 In a Formedon against two feoffees up- cond Feof-  
 ...a trust, if the feoffees refuse such Pleas as the fees.  
 ...ffor doth minister to them, or if they or one 14 H. 8.  
 ...them do refuse to vouch where the feoffor Pleas re-  
 ...eweth to them good cause of voucher, the feoff- fuse,  
 ...r hath no remedy against the feoffees to com- Voucher,  
 ...ell them but by *sub pœna*, or else by Action Action de  
 ...pon the case *per totam Curiam*. And *Bradnell case* with-  
 ...chief Justice of the Common-place said, that if out Heir,  
 ...feoffee upon trust die without Heir, or die his within  
 ...Heir being within age, or is attainted of felony, age, at-  
 ...that the Land cometh to the Lord, the Lord tainted,  
 ...shall have it to his own use, and the feoffor hath Eschete,  
 ...no remedy in *communi Banco*, 14 H. 8. 24. Lord.

47 The feoffees upon trust may grant the 14 H. 8.  
 ...Offices of Steward and Receiver *per Newdi- Office,*  
 ...bank Serjeant: if the feoffor die without Issue without  
 ...within Heir.

within  
age,

Lord,  
Dower,

Stat.  
Merchant,  
Notice,  
Particeps  
criminis  
consenti-  
entur  
fraus.

within age, the Lord shall hold the land to  
own use, and if the feoffees acknowledge a  
Merchant, and the Conusee do extend  
Land, he shall hold it to his own use, be-  
cause the said persons do come unto the Land by  
operation of Law, and not by their own Act  
nor by the Act of the Feoffees, but if the fe-  
offees infeoff a stranger which hath notice of  
the first use, there the second feoffee shall be seised  
to the first use, though he paid a consideration.  
*Quia participes criminis consentientes & age-  
les paci plena plebentur dolus & fraus nemini  
patrocinetur*; and if the second feoffment be  
one that hath notice, and he pay consideration  
then he shall be seised to the first use, but if  
he pay no consideration, nor have no notice,  
it shall be to the first use *per Justic. & Sa-  
vients*. If the feoffees grant a Rent for Land  
out of the Land without any consideration,  
it be to one that hath notice of the first use  
the Rent shall be to the use of the feoffor of  
the Land, *per Pollard, Brook, & Fitzherbert in  
in communi Banco*, 14 H.8. 4.

27 H.8.  
Burgh  
English,  
Gavel-  
kinde.

48 A use shall ensue the nature of the Land  
for if it be use of the Burgh English Land,  
the youngest shall have it; and if of Gavel-kinde  
then all the Children, *per Pilman Serjeant*  
14 H.8.6. *in banco* & 27 H.8. *per Pollard*  
*prentic*.

14 H.8.  
Common  
Law.

49 If the feoffee upon trust die, his Heir  
shall be subject to the trust, *per Bradwell cap. Jus-  
Fitzherbert, & Brook Justic. in communi Ban-  
co*, 14 H.8.7.

50 Note by Brook Justice, that uses are cre-  
ated by the common Law, and are relieved by  
conscience, and all meddling with the Land

Feoffees ought to be at the desire of the Creation,  
 Feoffor, and if the Feoffee do otherwise, he is Relief,  
 chargeable in conscience, 14 H.8.8. *in commu-* Desire of  
*Banco.* Feoffor.

51 If one have Feoffees in trust of Seigni- 14 H.8.  
 7, if the Tenancy do escheat unto them they Seigniorly,  
 shall be seised to the use of the Feoffor, and so Escheats,  
 is of Land recovered in value, per Pollard Recovery  
*in communi Banco*, 14 H.8.9. in value.

52 One having feoffees upon trust wills that 19 H.8.  
 his Executors should sell his Land, and died, if Executor,  
 that Executor make another Executor, in that Executor  
 the Executor of the Executor cannot sell of Execu-  
 the Land, because the first Executor had that tor.

power as in authority severall from his Execu-  
 torship, and though the first Executor had re-  
 fused the Administration, yet he might have sold  
 the Land *per curiam in cancellaria Scacc.* And  
 if he had willed that the chief Justice should Refuse,  
 sell his Land, although that the chief Justice Administ.  
 had resigned his Office and another been pla- Ch. Justice,  
 ced, yet the first should sell his Land per Brad- Resignati-  
 well Justic. *communis Banci*, and if the will on,  
 were that John S. should sell his Land, if T.S. Heir.  
 his Heir cannot sell it, because the trust is  
 determined per Shelley & Ingelfield Justic. &  
 Willoughby & Spilman Serjeants, 19 Hen.

53 Note by a Statute in Ann. 1 R.3. the Will 1 R.3.  
 of the Feoffor is made good by the common  
 Law release before it took effect but by consci-  
 ence, 1 R.3.

54 One make a Feoffment to the use of his 19 H.8.  
 last Will and Testament, and declareth by his 30 H.8.  
 Testament that the Land shall be to the use of Testament,  
 his Wife for Life, and afterwards to the use of Revoke  
 his use.

**Expressed** his Son in tail, in this case he may change  
**upon Li-** VVill and the uses at his pleasure, because  
**very.** referred to his Testament *per Bradwell*

*Iust. communis banci & Fetchlers & Inglis*  
*Iust. in communi Banco, 19 H.8.11. & 30*  
*8 6. Feofment 47.*

**30 H.8.**

**Covenant,**

**Notice,**

**Springing**  
**use,**

**Sale.**

55 If I do covenant with I.S. that wh  
 he shall infeof one of three Acres, I and  
 Heirs and Assignes will stand seised of oth  
 Lands to his use. If I. make a Feofment un  
 me that hath no notice of this use, yet if I.  
 do infeof me of their Acres, the Feoffee shall  
 seised to the use of I.S. because it is a Springin  
 use, and the land is charged with that use  
 whose hands soever it come, but if I. have feo  
 fed, and they sell the said land to me that ha  
 no notice of the use, there the second Feoffe  
 shall be seised to their own use, 30 H.8.6. Fe  
 ments at use 50.

**Temps H.8**

**Funda-**  
**mentum**  
**legum im-**  
**perpetuum.**

56 If I do buy lands and the Seller exec  
 teth an Estate unto me, *habendum imperpetu*  
*um*, without saying to my Heir, the meaning  
 the Bargain being that I shall have the Fe  
 simple if the Seller do refuse to make furthe  
 assurance, I may compell by *sub pvena*  
*Audley Cancell. temp. H.8. & liber qui dicitur*  
*fundamentum legum Anglie B. cons. 25.*

**34 H.6.**

**Pet. in**  
**Canc.**  
**Sale,**  
**Profits,**  
**Executor.**

57 The Feoffee upon trust sold away part  
 the Lands, and received money for it, and th  
 rest he kept, and took the profits, and dyed  
 the Feoffor *per Bill in Cancell.* recovered  
 gainst the Feoffees Executor the money reco  
 ved, the value of the profits, *per decretum*  
*Cancell. ex assensu omnium Iustic. & aliorum*  
*de Concilio Regis presentium pet. in Cancell.*  
*Anno 34 H.6.*

## C H A P. III.

*Of Copy-holds.*

Tenant at will by Copy of Court Roll shall have a *sub poena* against his Lord, if he put out of his Tenement, per *Kirkby Magistrum Rotulorum*, & *Pool Serjeant*, in *Canc.* 32 H.6. Put out Lord.

H.6.21. Stat. *sub poena* 2.

Note, *Littleton Serjeant* said, that he saw that Tenant by Copy Court Roll sued a *sub poena* against his Lord, and it was holden by the Justices that he should recover nothing; but *Danby* chief Justice of the common Pleas said, that the Judgement was so given because he sued to have recovered the Free-hold where-into he being a Copy-holder could have no right, 7 E.4.19. *sub poena* 6. Tenant per Co. 10.

## C H A P. IV.

*Of Chattels Real.*

One being bound in a Statute Merchant 22 E.4. paid the money without having a Release, Statute and notwithstanding the Conusee sued Execu- Merchant, on, the Question was whether the Chancellor Payment, might grant a *sub poena* against the Conusee Release, *Sirfax Inst.* and *Hussey* chief Justice of Eng- and said, that he might not, for it were no reason

*witnesſes,* reason that the Teſtimony of two VVitneſſes  
*Record.* ſhould defeat a matter of Record, *Camera Scacc.*

7 H.7. 22 E.4.6.

*Statute* Richard Reade had Execution of certain  
*Merchant.* Lands upon a ſtatute Merchant, and the  
*Recovery,* Debtor ſold the Land to Sir William Capell who  
 recovered the ſame by Default with Voucher

*Termor,* againſt the Debtor, whereupon William Capell  
 entered, and the Termor ſued a *ſub poena*, and

*Falſifie,* it was holden that if Reade had no remedy to  
 falſifie this recovery, then he ſhould be reſtored

*Covin.* in the Chancery by *ſub poena*, becauſe it was  
 done by Covin per Cancell. & Huſſey & Brian

*cap. Juſt.* 7 H.7.11. & 12. b. conſ. c.8. & b. Faſt  
*Recovery* 25:

7 H.7. If a Recovery be had againſt the Leſſor, and  
*Recovery,* the Leſſor for years do not pray to be received,

*Receipts,* if by that means he have no remedy at the com-  
*Termor,* mon Law, he ſhall have remedy in the Chancery,

*In Priſon,* ſo that he were in Priſon or beyond Sea, or  
*Beyond* had any reaſonable cauſe of his Default, per Ca-

*Sea.* niſby & Keble Serjeants, but *quare* if he had  
 no ſuch cauſe, 7 H.7.10.

3 Ma. If one make a Leaſe for years, or grant him  
*uſe,* Leaſe for years to a uſe, this grant and uſe

*Leaſe,* good notwithstanding the ſtatute of Ann. 3 H.  
*Stat.* 7. cap.15. uſes 7. becauſe the ſtatute makes

3 H.7. onely theſe Gifts of Chattels void, which were  
*Fraud,* made to defraud Creditors, 3 M.16. Feoffment

*Creditors,* at uſe 60.

## CHAP. V.

## Of Chattels Personals.

It was agreed upon between I.S. and I.D. 37 H.6.2  
 that I.D. should have cert. in Debts due unto Debts;  
 I.S. by divers persons, and I.D. did enter into Obligation  
 Obligation to I.S. for the Government of cer-  
 tain summs in consideration of the same Debts; Things in  
 and because there were but things in Action, Action;  
 and that I. had no remedy to recover the Debts  
 by the common Law, therefore I.D. sued a  
*sub poena* against I.S. to be discharged of the  
 Obligation by conscience, and for so much as  
 appeared that by his Contract no Duty could  
 rest in I.D. therefore it was decreed that I.D.  
 should bring in the Obligation by conscience,  
 for so much it appeared, that by his Contract no  
 Duty could rest in I.D. therefore it was decreed  
 that I.S. should bring in the Obligation to be  
 cancelled, or else release to I.D. *per Cant. cum*  
*opinione omnium Justiciar.* 37 H.6. 13.b. Barr.  
 35.6. consc. 4. No remedy,

2 Sir Thomas Brown being possessed of cer- 39 H.6:  
 tain Goods was attainted of Treason, which Treason;  
 Goods came to the hands of John Brown, the  
 King by Patent gave the Goods unto Walwine,  
 and Walwine sued a *sub poena* against John  
 Brown for the Goods, who came into the  
 Chancery by Jeynes his Counsel, and demand-  
 ed Judgement of the *sub poena*, for that a *sub Attainder*;  
*poena* doth not lie but where the party hath no King,  
 remedy by the common Law, and in this case No remedy  
 the Complainant may have an Action of Debt Detinue.

Forfeiture,  
Seizure,  
Record,

Court,

Possession,  
Things in  
Action,

Inventory,  
Fleet.

8 E. 4. 3.

Procura-

tor,

Save

harmless,

Notice

Oath,

Cause

Christian,

Affiance,

Damage,

Promise,

Folly.

nue, for the King might have had the like Action, to whom it was answered by Greefield, being the Complainth's Counsel, that the King himself can have no Action by the common Law for Goods forfeited, untill the Goods have been seized to his use, or else that the Goods be proved to be his by matter of Record, and yet the King hath Election to sue for them in what Court he will, and so may the Patentee; also the Grantee can have no Action for the Goods at the common Law without having had possession, seeing they were granted to him as things in Action, and the Court held that the *sub poena* did lie very well, and John Brown was commanded to bring in an Inventory of the Goods against the next day, or else to be committed to the Fleet, in Cancell. 19. 8. 26. b. conse. 6.

A Clerk made I. S. his Procurator of his Benefice, and promised him by Oath that he would save him harmless for the Occupation, the Clerk resigned unknown to be the Procurator, and he was sued for the Occupation, and therefore sued a *sub poena*. Jenney Apprentice said that he ought to sue in the Court Christian for the breach of his faith; as if one be affianced to a Woman, and then forsake her, he is to sue there and not here, the Chancellor said that it was true that he ought to sue there for breach of Oath, *Si petit ipsum canonice iudicia*; but he shall have remedy here for Damages he sustained by the not performing of the promise, Jenney said also, that it was folly to trust his word, and therefore he had remedy, *Quia Deus est Procurator saluorum*. 8 E. 4. 6. conse. 14. *sub poena* 7.

A *sub poena* was sued against three Executors 8 E. 4. 10  
 d, b, and one of them appeared, and the Com-Execu-  
 the King's plaintiff prayed that he might be compelled to ters,  
 mme answer; Fairfax said that he ought not to an-Answer,  
 Good answer untill his fellows appeared also; for in  
 at the Action of the common Law one Executor One Exe-  
 of shall not be forced to answer without his Com-utor,  
 sue companions, by the statute of 9 E. 3. cap. 3. Also it  
 may be that the others can shew matter to abate  
 the Bill of which this Executor hath no know-  
 ledge, the Chancellor said that the three Exe-Abate Bill,  
 cutors are instead but of one person, viz. the Notice,  
 Testator, and therefore one of them being  
 but a Member shall not be forced to an-  
 swer untill they have all appeared. Also if he  
 should answer, it might be that through his  
 ignorance the other should be concluded, which Ignorance,  
 were not conscience; also that statutes that or-  
 dain Proces do not extend to this Court, but if  
 give a little right this Court must obey it,  
 E. 4. 5. because 15. Responder. 6.

A *sub poena* was sued, because the Defendant 9 E. 4. 10  
 had recovered upon an Obligation by sure one Obliga-  
 Court, whereas in truth the Obligation was tion,  
 made in another Court, by means whereof the  
 Complainthiff could not be suffered to plead  
 divers Pleas, which he might have pleaded if  
 the sure had been pleaded in the right Court, Foreign  
 and the Counsellor said that the *sub poena* did County,  
 well lie, because the Defendant did against con-Action,  
 science, for he would not have the truth known, Pleas.  
 and therefore he sued in a foreign County, and  
 the truth cannot be so well known and tried in  
 any place as it may be in the County where it  
 was done, 9 E. 4. 2. *sub poena* 10. b. cause.

6. Horsley and Middleton bought certain 9 E. 4.

Obliga-  
tion,

Receive  
part,  
Longer  
day,

Discharge,  
Election,

Respite,  
Sure,

Payments  
by one.

16 E. 4.

Defraud  
Gift,

Sanctua-  
ry,

Husband  
and wife,

Wools price three pounds of Sir Henry Middleton and were bound by several Obligations, whereof one was of three hundred pounds, and Middleton had all the profit of the Wools; Sir Henry died and made his Executrix, against whom Woolsey sued a *sub pœna*, shewing in his Bill that whereas she had received a part of the money of Middleton, and had given him longer day, yet notwithstanding she had put in surety against Woolsey; Catesby for the Defendant said that though she had respited the surety against Middleton, yet Woolsey is not to have advantage by it, for by Law and Conscience she might have sued which of them she would; and if she had granted to Middleton that she would never sue him, yet that is no Discharge to Woolsey; the Chancellor said, that at first she might have chosen to sue the one or the other, but seeing that she had made a covenant in the law of nature between her and Middleton to respit the surety against him, that shall give advantage to Woolsey, for she hath chosen to be paid by Middleton, and if he had either paid her, or else that it were agreed between them that she should take it up of a stranger which is indebted to Middleton, Woolsey should have advantage of that, 9 E. 4. 41. *sub pœna* 12. b. *consc.*

7 A Debtor made a Gift of all his Goods to another to the intent to defraud his Creditors and keep still the Goods in his own possession and took Sanctuary at Westminster, and died the Goods coming to the hands of his Wife who took another Husband, against whom (being possessed of the Goods) the Creditors sued a *sub pœna*, and the Husband was compelled to answer to it, *per curiam cancell.*

49 *consc.* 19. it seemeth the Gift wa, void in  
 law.

One was Surety for another, and the Debtor  
 with two others were bound by Obligation to

16 E.4.  
 Surety,

the Surety to save him harmlesse, afterwards

the Surety paid the money and sued his Obliga-

tion against the principall and the two others,

the mortgage depending the principall sued a *sub*

*poena* against the Surety to have certain Goods

Goods,

out of his hands which he had delivered unto

the Surety for his security, before the making of

the Obligation, and so prayed that he might

be double charged, wherefore he prayed re-

Double  
 charged,

covery of his Goods, the Defendant answer-

ed that his Goods were delivered for another

purpose, and shewed the cause, and thereupon

they were at issue; and the Complainth prayed

an Injunction that the Defendant should not

Injuncti-

proceed in suite upon the Obligation, but the

on.

Court denied it, because the Defendant had in-

debted himself by severall means, as well to

the Goods, as to the Obligation, and there-

fore it were against reason to delay his suite, *qd*

*16 E.4. 9.b. consc. 20.*

One was Surety in a statute Merchant, payed

22 E.4.

the money without having a Release, and not-

Statute

withstanding that the Conusee sued Execution,

Merchant.

The Question was whether the Chancellor

might grant a *sub poena* against the Conusee;

*surfax* Justice and *Hussey* chief Justice of

England said that he might not, for it were not

reason by the Testimony of two Witnesses to

witnesses,

fear a matter of Record, and so it is of an

Record,

Obligation, for the Debtor may refuse to pay

Obliga-

the Debt without any Acquittance, it is his fol-

tion,

low to pay the Debt twice then to avoid Accord

Acquit-

or tance.

Common  
course,

Presi-  
dents.

22 E.4.  
Recovery,  
Payment,  
Release,  
Acquitt-  
ance,

Record.

4 H.7.  
One Exe-  
cutor,

Release,  
Testament,

Sine reme-  
dio,  
Common  
Law,

Chancery.

or Specialty by two Witnesses, and the Chan-  
cellor said that it was the common course of the  
Chancery to grant *sub pœna* upon an Ob-  
ligation so satisfied, and that thereof there  
are divers Presidents in the Chancery, but he  
agreed that no *sub pœna* doth lie upon Statute,  
because it is matter of Record, in *Cam. Statute*.  
22 E.4.6.b.conse.23.

10 A Bill exhibited containing that whereas  
the Defendant had recovered Debt and Damages  
against the Plaintiff, and was paid without any  
Release or Acquittance, yet the Defendant had  
sued Execution notwithstanding, and be-  
cause the Complainant had no remedy by the  
common Law, he prayed a *sub pœna*, but the  
Chancellor would not grant it without advice  
of the Justices; for by that means every Re-  
cord might come to be examined before him,  
and so the common place should be destroyed.  
22 E.4. *sub pœna* 16.

11 One Executor released unto a Debtor  
without the consent of his Companion, by  
means whereof the Will could not be perform-  
ed, and the other Executor sued a *sub pœna*  
against the Executor which released, and a-  
gainst the Debtor, *Fineux* Ser jeant said, that  
was not remediable, for every Executor has  
an absolute power by himself, the Chancellor  
said, *Nullus recedat à cancellar. sine remedio*,  
and it is against reason that one Executor  
should have all and release alone, *Fineux*,  
*nullus recedat sine remedio nullus indiget*  
*confessus*, but the common Law is ordained for  
many matters, and some such as are remediable  
by the common Law, are to be relieved in the  
Chancery, and divers are remediable by ne-  
ther,

Chancellor, and such are in conscience between a man and his Confessor, of which sort this is one; the Chancellor said that every Law is or ought to be according to Gods Laws, and Gods Law is that one Executor being of evil disposition should not spend all the Goods, and if such an Executor being able do not make restitution, or being unable be not willing to make restitution, he shall be damned in Hell, and the Testament is, *Constitutio tales esse executores meos ut ipsi disponant*. So that their power in conscience is joint and not severall; and also it is *pro salute anime mee*, wherefore they must not mispend, if they do, they do contrary, then it is without Warrant, and to be remedied in conscience, and the Chancellor that he would have the matter argued, 4 H.7.4. *sub pena 17. b. consc.*

If the Debtor payeth Debt wherein he was bound by Obligation, and receive Acquittance, this is no Bar at the common Law, and yet to be relieved in conscience, *per cano.* 7 H.7.11. If one be indebted to me without Writing, and he dye, I have no remedy against the Executors by the common Law, but in the Chancery by Conscience, *per cano.* 7 H.7.12.

Thomas Baby exhibited a Bill, that whereas he delivered certain Goods of trust to the Defendant, and thereon borrowed twenty sh. to be paid at a day certain, at which day he paid the same, and the Defendant then promised to deliver the Goods on the next morrow; yet the Defendant before the morning sold the Goods to a stranger, to the end that if the Complainant should sue an Action of Detinue he must wage his Law; and it was decreed in *curiam cancell. Law*, that Damages.

Doct. &  
Stud.  
Obligati-  
on,  
Payment,  
Acquit-  
tance.  
Stat. 27  
E. 3.  
Stat. 31  
H. 6.  
Robbery,  
Spoil,  
Sea-ports,  
Subject.

that the Complainant shoul recover his Goods and fourteen sh. for six Spoons parcell thereof  
*Pet. in Canc. 20 H. 6.*

If one be bound in a sing'e Obligation, pay the Money and take no Acquittance, or it be taken one and happen to lose it, he shall be compelled by the Law to pay it again, but yet he may be holpen by *sub poena*, *Lib. Doct. & Stud. cap. 12.*

Note that the statute of 27 E. 3. cap. 13. and Anno 31 H. 6. cap. 4. do give authority to the Chancellor to hear and determine Robberies and Spoilings upon the Sea, or in the Ports, as well in the Cases of Subjects as Strangers. *v. hic fo-58. casu pro & 3.*

## CHAP. VI.

### Of Chattels in trust.

2 E. 4.  
Obligati-  
on,  
Sue.

IF I. be bound unto I. S. to the use of I. D. there I. D. may sue a *sub poena* against I. S. and compell him to sue an Action of Debt against me upon the Obligation, *per Moil & Danvers Justiciarii in communi Banco, 26. consc. 6.*

4 E. 4.  
Money,  
Obligati-  
on,  
Admini-  
strators.

2 I. S. delivered two hundred Marks to the Chamberlain of London to be kept, and appointed the same to be delivered to his Executors or Administrators after his Decease to be employed for his Soul, the Chamberlain delivered the Money to I. D. to keep, and I. D. entered into Bond unto the Chamberlain to the use of

*I.S.* that he would re-deliver it to the Cham-  
berlain when he should be required; *I.D.* died.  
and the Administrators sued a *sub poena* against  
the Chamberlain to compell him to sue *I.D.*  
upon the Obligation, because *I.D.* had refused  
to deliver the money for the Chamberlain,  
E.4.34. b. *consc.* 10. & b. *prohibicion.* 11. b.  
Oblig. 40.

3 Note that if I give Goods to another to *7 E.4.*  
my use, and they be taken from him, he is Goods,  
bound in conscience to sue an Action of Tre-Trespasse,  
Trespasse against him at my charge, and to my use, Appeal of  
but not to sue an Appeal of Robbery, because Robbery,  
the Appellant must swear that his Appeal is  
true; and I cannot compell him to take that Oath,  
Oath, per Chock Jus. & Littleton Serj. and  
thinketh the reason to be because the De-  
endant in the Appeal may challenge the Com-Combate,  
bate, and bring the others life in adventure,  
E.4.29. *sub poena* 6. b. *Feofments at use* 38.  
& b. *consc.* 27.

4 One was bound in a statute Staple unto *7 E.4.*  
*I.S.* and *I.D.* to the use of *I.S.* and afterwards Stat.  
*I.D.* released to the Debtor, whereupon *I.S.* su-  
ed a *sub poena* against *I.D.* and the Debtor, and  
rehearsed his Bill that the Debtor had know-  
ledge that the Obligation was to the Com-One re-  
plaintiffs onely use, that the Release was made leaseth,  
by Covin between them to defraud him of his  
Debt, and it was ordered in the Chancery that  
the *sub poena* should stand good against *I.D.* be-  
cause of his Deceit, but the Debtor was dis-  
charged of the sute, because it is lawfull for eve-  
ry man to help himself, and to procure the Dis-Covin.  
charge of his Debt, especially seeing that *I.D.*  
might have molested him for the same; also it  
might

might be that the Debtor had paid I.D. and were no reason that he should pay it again to I.S. and it was alleged for the Complainant that if I deliver Goods to another to keep to my use, if he sell them to one that knoweth the use of the Goods to belong unto me, I may have a *sub poena* against the Seller and Buyer both, and so in this case, whereunto the Court answered that it was so in that case, because the Buyer did purchase Goods which in conscience are mine, but in this case by the Release the Debtor purchaseth nothing but onely dischargeh himself, but the Reporter thought that the difference made between a Purchase and a Discharge was not good; for the Debtor is not cleared in conscience and before God unless he to whom the Debt in conscience appertaineth do discharge him, or if he exclude him of his Debt by policy it is not good conscience, but if the Creditor had paid the money unto I.D. it would have discharged him against I.S. 11 E.4. *sub poena* 13.6.b. *const.* 17.

Fraud,

Deceit,

Discharge,  
Goods,

Notice,  
Sale,

Purchase,

Policy,

Payment  
to one.

5 If one be bound to another to any use, and the Obligee knowing the use do release to the Obligor, I may have a *sub poena* against the Obligee, *per cancellariam*, 7 H.7.12. *sub poena* 18.

CHAR.

## C H A P. VII.

## Of Aliens.

The statute of Anno 27 E.3. is, that if any Merchant privy or stranger be robbed of his Goods upon the Sea, and the Goods so robbed come into any parties hands within the Realm, and he will sue to recover the said Goods, he shall be received to prove the said Goods to be his own by his work or by his Chart. or Caker, or by good and lawfull Merchants, privy or strangers, and by such proofs the same Goods shall be delivered to the Merchant without making other sure at the common Law, Stat. Anno 27 E.3. cap. 13. Merchant 17. Note that by this statute the Chancellor alone without any of the Justices hath power to proceed to Judgement, 2 R.3. 2.

2 Also the Statute of 27 E.3. is, that if Debate arise betwixt the Maior and Constables of the Staple and such Merchant stranger as shall be assigned to sit with them upon discussing of any plea or quarrell touching Merchants Aliens, the Tenor of the same Plea shall be sent before the Chancelor and other of the Kings Counsel to be determined there without delay, Anno 27 E.3. cap. 24. Staple 17. Stat. 27 E.3. 2 R.3. Chancellor alone.

3 If any Subject attempt or offend upon the Sea, or in any Port within the Realm against any person stranger being upon the Sea, or in any Port aforesaid, by way of Amity, or League, or truce, or by force of the Kings safe conduct or safeguard in any matter, and especially in attaching

*Attach-  
ment,  
Robbery,*

*Delivery,  
Restituti-  
on,*

*Justice,  
Possessio-  
ner,*

*Costs,  
Expences,  
Execu-  
tion,*

*2 R.3.  
Assitant.*

*13 E.4.*

aching of any such strange person, robbing or spoiling him of his Ship or Goods, or against any other person of his Lay-people, the Chancellor as well for the deliverance of such person attached, as to make Restitution of Ship or Goods or the value thereof, shall have authority calling to him any of the Justices upon a Bill or Complaint to him made to make such procelle of the Chancery, as well against such Offenders to bring them into the Chancery to answer, as against any other persons to whose hands any such person so attached, Ship or Goods shall come, & for the Deliverance & Restitution by them to be made as shall seem to the Chancellor most necessary, and upon this Procelle the Chancellor further to proceed in this matter if the case do so require by advice of any such Justice to make the person stranger so grieved to have full Deliverance and Restitution of his Goods, &c. and also of all the Costs, Expences and Losses made and suffered by him in this behalf, and thereupon to make all manner of execution upon the same out of the same in such sort as shall seem to him necessary for such Deliverance and Restitution to be had, calling him to any such Justice as aforesaid, statute 31 H 6. cap. 4. *Aliens*. First, note that by this statute the Alien that complaineth must sue in the Chancery before the Chancellor assisted with one of the Justices. 2 R.3.2.

4. A Merchant Alien bargained with one to carry certain Bales of Merchandizes to *Hamp-ton*, the party took the Bales and carried them to another place, and brake them up, and took out the Merchandizes, and converted it to his own use, and the Alien complained to the Counsel

Counsel in the Star-chamber; the Chancellor  
 that although this Fact be Felony, yet it shall  
 be tried before the Counsel, and not at the  
 common Law, because the Complainant is a  
 Merchant alien, and is come by late Conduct,  
 and it shall be determined according to the  
 Law of Nature of the Chancery, and he may  
 sue there from hour to hour, and from day to  
 day for the speed of Merchants; also he laid,  
 that strangers shall not be bound by our sta-  
 tutes which are *introducunt jura legis* by statute  
 that are *Deliberativa antiqui juris, viz. juris*  
*naturæ*. And although that by their being in  
 the Realm the King hath Jurisdiction to com-  
 pell them to abide right, yet that shall be *secun-*  
*dum legem naturæ*, which is called by some the  
 Law Merchant, which is an Universal Law  
 through all the World, *in camera stellata*, 1.3.

2.4.9. *Denison*. 2. *b. Denison* 5.  
 5 The Chancellor said, that whereas there is  
 a statute that safe Conducts intolled, and the  
 number of Mariners, and the name of the Vessel;  
 yet if any Alien have a safe Conduct, and  
 have not those circumstances therein, the safe  
 Conduct notwithstanding shall be allowed; and  
 so hath been adjudged; for the Aliens do say,  
 that they are not bound to know our statutes,  
 and they do come into the Land by Warrant of  
 the Kings Seal and safe Conduct, and if it shall  
 not be sufficient, they are defrauded; but others  
 say the statute which ordaineth for the For-  
 feiture of Merchandize shall binde as well  
 Aliens as others *in camera stellata*, 13 E.4. 10.  
*b. Denison* 5.

6 Note that it was said in the Star-chamber 13 E.4.  
 that a Denizen shall not sue an Alien before  
 the

Star-  
 chamber,  
 Felony,

Safe Con-  
 duct,  
 Law of  
 Nature,  
 De boram  
 bora,  
 Statutes,  
 Juris Na-  
 ture,  
 Law Mer-  
 chant.

Safe Con-  
 duct,  
 Enrol-  
 ment,  
 E.4.

Statutes,  
 Notice,  
 Forfeiture,  
 in re.

**Denisen,  
Sutes,  
Alien.**

13 E.4.

**Safe Con-  
duct,**

**Robbery,  
waive,**

**Pursue the  
Law,**

**King li.**

**In corpore,**

**In bonis,**

**Covenant.**

the Counsel, but an Alien may sue a Denisen and it was said, that it is by force of the Statutes, 13 E.4. 10 *Denisen* 26. *Denison* 5.

If any Alien having a safe Conduct be robbed, and the Goods waved by the Felons, yet the Alien shall not be compelled to sue the Law against the Felon, neither may the King have the Goods as a Waive, nor any other by the Kings Grant, or by prescription, because the King hath granted unto him *salvum & securum conductum tam in corpore quam in bonis* which is a Covenant between the King and him, and he may sue the King upon the same *per omnes Justiciarios in Camera stellata*, 13 E.4. 10.

19 E.4.

**League,**

**Common**

**Law,**

**Real Acti-  
ons,**

**Enemy,**

**Safe Con-  
duct,**

**Open War.**

Note that an Alien born under any Prince which is in League with the King may sue at the common Law all Actions of Debt and personal Actions, but not real Actions; but if he be born under the obedience of the Kings Enemy, then the Alien hath no Action or Suit unless he come by safe conduct; and note that if all England do make War with a foreign Prince which is in League with the King, yet if the King do not assent thereunto it is not open War, for the League must be broken by Ambassage, or otherwise by the King, 19 E.4. *Denison* 16. & 20.

2 R.3.

**Star-**

**chamber,**

**Robbery,**

**Sea.**

**Possessions,**

27 E.3.

A Merchant of Spain exhibited a Bill before the King and his Counsel in the Star-chamber against certain English men, and shewed that he was robbed upon the Sea by certain Britains and that his Goods were brought into England and are come to the hands of the Defendants and prayed Restitution according to the Statute de Anno 27 E.3. cap. 13. and it was said

all the Justices that the Complaintiff must prove that the King of Spain was in League with the King at that time, and the taking of the Goods also; he must prove that the first taker was under the Kings obedience, or else in amity with the King, and not the Kings Enemy, my, for if the taker were the Kings Enemy, Restitution, yet those Goods being come to English mens hands shall not be restored, *Quia non est depredatio sed legalis captio prout inimicus caput super inimicum, in camera stellata, 2 R. 3. 2. Denisen 8.*

## CHAP. VIII.

### *Certain Statutes giving special Power to the Lord Chancellor.*

1. IN every original Writ of Action personal, Appeals and Indictments, in which the Exigent shall be awarded to the names of the Defendants addition shall be made to their Estate, Degree, or Mystery; and the Town, Hamlet, or places, and the Countries in which they were or be conversant, and the Clerk under whose names such Writs shall go forth written shall not leave out the Additions upon pain to be punished, and to make Fine to the King by discretion of the Chancellor, *stat de Anno 1 H. 5. cap. 5. Additions.*

2. If any person make Complaint duly in the Chancery, that any Murthers, Mann-slaugh-

**Murders,**  
**Fly,**

**Stat.**  
**8 H.6.**  
**Certifi-**  
**cate,**

**33 H.6.**  
**This gran-**  
**ted by Pet.**  
**in Canc.**  
**English**  
**Bill.**

**33 H.6.**  
**1. part.**  
**Stat.**  
**4 H.7.**  
**Justice of**  
**Peace.**

ters, Assemblies of people in great numbers, manner of Insurrections, and Rebellions, Rout, is or be fled, and with-drawn in Woods, secret or unknown places, or elsewhere to the intent to avoid the execution of the Law, upon such Complaint a Bill shall be sufficiently made for the King, and the Chancellor after such Bill to him delivered (if he may be duly informed that such Bill containeth truth) shall have power according to his discretion to make a Writ of *Capias* at the Kings sute to the Sheriff where the Offences are supposed to be done, yet, if the Chanc. then they shalbe put in Award or Imprisonment after the discretion of the Chancellor and moreover he shall send to inquire of such Offences, and upon that shall be done as the Law requireth: and if the parties stand out then a Proclamation shall be awarded, yet, if the Kings Bench, and upon Default they shall stand convict and attainted, *stat. Anno 2 H.6. cap.9. Riots 5.* This statute is made perpetual and it is enacted that the *Capias* shall not be awarded unlesse it be witnessed by two Witnesses of peace of the Country where such Riots be supposed, that the common voice and truth is of the same Riots, *stat. Anno 8 H.6. cap.10. Riots.*

3. If any person be hurt or grieved in any thing, that the Justices of peace may hear, determine or execute in any wise, he is commanded to make Complaint to the Justices that dwell next to him, or to any of his fellows, and desire a remedy, and if he have then no remedy if it be nigh such times as the Justices of Assize come into that Shire, that he then shew his Complaint to the same Justices, and if he have

no remedy, or if the Complaint be made  
before the coming of the Justices of As-  
sise, and then he so grieved come unto the  
King or to his Chancellor, and shew his Grief,  
and the King shall send for the said Justices to  
know the cause why his Subjects be not eased,  
his Laws executed, and if he finde any of  
them in Default of executing of his Laws in  
the Premises, he shall cause him so offending to  
be put out of the Commission, and to be  
punished according to his demerits, *stat. Anno*  
*H.7.cap.12. Proclam.3.*

4 Poor people having cause of Action a- *Stat.*  
gainst any person, shall have by the discretion of *11 H.7.*  
the Chancellor Writs Original, and Writs of Poor Peo-  
ple *pana*, therefore paying nothing to the ple-  
euer for the Seals, nor to any person for the  
writing of them, and the Chancellour  
shall assigne Clerks to write the same, and also  
learned Counsel and Attournies for the same,  
without any reward to the King thereof, *stat.*  
*Anno 11 H.7.cap.12. Poor People.*

If any Farmer of any lands belonging to the  
reparation of *Rochester* Bridg do not like to give  
a new Lease as another will, then he shall  
live for his bettering or building such Recom-  
pence as shall be thought reasonable by Agree-  
ment between the Wardens and Assistants and  
him, and in Default of their Grievances, such  
as shall be thought meet by the Chancellor or  
Treasurer, *stat. Anno 18 Eliz.cap.17. Brid-*

*Stat.*  
*18 Eliz.*  
*Rochester*  
*Bridge.*

*es 2.* *St.21 H.8*  
A statute was made concerning the exercise *St.14 H.8*  
of Trades by strangers *Denizens in Anno 14 Merchant,*  
*H.8.cap.2.* and there was a Decree and an Act *Strangers,*  
made that search should be made by all stran- *Search.*

gers being Artificers and Houſholders for Offences againſt that ſtatute, and if they reſuſe and the ſame proved before the Chancellor, or before the chief perſons of ſuch Cities or Town, the Reſuſer ſhall uſe no longer his Occupation, *ſtat. Anno 21 H.8.cap.6. Aliens 4.*

*Stat.  
33 H.8.  
Fa'ſe token or letter.*

6 If any perſon falſly or deceitfully obtain into his hands or poſſeſſion any Money Goods, Chattels, Jewels, or other things of any other perſon by colour or means of any falſe token or counterfeit Letter made in any other mans name, the Offender being convicted by Witneſſe taken before the Lord Chancellor, or by Examination of Witneſſes, or by Confeſſion taken in the Star-chamber before the Couneſel, or before the Juſtices of Aſſize in their Circuits, or before the Juſtices of P. in their General Seſſions, or by Action in any Court of Record ſhall have ſuch correction & puniſhment by Imprisonment of his Body, ſewing upon the Pillory or otherwiſe by corporal pain (except pains of Death) as ſhall be appointed by the perſon before whom he ſhall be convicted, *ſtat. 33 H.8.cap.1.*

*37 H.8.  
Tithes in  
London,*

If any variance ariſe in London about the payment of Tithes, and upon a Complaint made to the Maior, he not end the ſame within two moneths, or if any of the parties themſelves grieved, then the Chancellor upon Complaint to him made within three moneths next following ſhall make an end of the ſame with ſuch Coſts to be awarded as ſhall be thought convenient, *ſtat. Anno 37 H.8.cap.12. Tithes 9.*

## C H A P. IX.

*Certain Statutes giving special Power  
absolute to the Lord Chancellour,  
jointly to others.*

THE Chancellor and Treasurer taking to Stat. 31  
them Justices and other of the Kings Coun- E. 3.  
cil, such as to them shall seem meet, shall have  
power to ordain remedy for the buying of Fish.  
Stockfish, and Botulph, and Salmon of Bar-  
wick, and fifty *Bristriat*, and elsewhere, to the wines  
intent that the King and the people may the  
better be served, and have better markets than  
they have had before this time, and that the  
ordinances by them made in this party, be  
firmly holden. Stat. de Callice. 31 E. 3. cap.  
6. Fishers 4.

2. No Master, Wardens, and Fellowships Stat. 19  
of Crafts or Mysteries, nor any rulers of H. 7.  
Guilds or Fraternities, take upon them to Corpora-  
make any ordinances, or to execute any tions.  
acts by them heretofore made, in disheritance Ordinances  
or diminution of the Prerogative of the King, ces.  
nor of any other, nor against the common prof-  
fits of the people, but if the same acts or ordi-  
nances be examined and approved by the  
Chancellor, Treasurer, or chiefe Justice, or  
three of them, or before both the Justices of  
Assize in their circuit in the Shire, where such  
acts and ordinances be made, upon paine of  
forfeiture of 40 l. for every time that they do  
the contrary. Stat. de Anno 19 H. 7. cap. 7.  
Corp. 2 H 2 If

Stat. 14.  
H. 8.  
*Aliens.*

3. If the Wardens, and Masters of Fellowships of handicrafts, within any City or Borough, or Town Corporate, where such Wardens be, and in such where no Wardens of handicrafts are, then if the Bayliffs, or Governors of the Boroughs or Towns will wrongfully intreat any stranger, in executing of the Stat. de Anno 14. H. 8. then the stranger so grieved, may by bill or information complain to the Chancellor, or Treasurer of England, or to the Justices of Assize in the County for the time being, which by their examination shall have authority to hear and determine the same Complaint, and to award to the Complainant such amends, as by their discretions shall be thought reasonable. Stat. Anno 14. H. 8. cap. 2. *Aliens* 3.

Stat. 22  
H. 8.  
*Scavage,  
or che-  
vage.*

4. The Tables to be set up in the City of London, touching Scavage within the same shall be first viewed, examined, and approved by the Chancellor and Treasurer, the President of the Counsell and the Lord Privy seal, the Lord Steward and the two chief Justices, or by 4. of them at the least, and by them subscribed, Stat. Anno 22 H. 8. cap. 1. *Aliens*

Stat. 25  
H. 8.  
*Prises of  
Books.*

5. If any Printers, or Sellers of Printed Books, doe inhance their prises in sale of binding, at too high and unreasonable prises, in such wise as complaint be made thereof unto the King, or to the Chancellor or Treasurer, or either of the chief Justices, then they, or two of them shall have authority to enquire thereof as well as by oathes of 12 persons as otherwise by due examination by their discretions, and after the same so found, then they, or two of them from time to time, shall have authority

redress such inhaunting of prizes by their  
 tions, and to limit prizes as well of the  
 books, as for binding them, and moreover,  
 at the offender being convicted, forfeit for  
 every book by them sold and inhaunted 3. s.  
 and the one half to the King, the other to the  
 party grieved, that will complaine. *Stat. Anno*  
*8. H. 8. cap. 15. books.*

6. The Chancellor, Treasurer, President 28 H. 8.  
 of the Counsell, Privy Seal, and the two chief *Prices of*  
 justices, or three of them, shall have authority *wines.*  
 by their discretion to set prices of all kind of  
 Wines, that is to say, of the prices of the But,  
 Tun, Pipe, Hoghead, Ponchen, Teirce, Bar-  
 rel or Rundlet, when it shall be sold in gross,  
 so that they or any of them cause the prices by  
 them set to be written, and open Proclamati-  
 on thereof to be made in Chancery, in Term  
 time, or else in the City, Borough, or Town,  
 where any such Wines shall be sold in gross,  
*8. H. 8. cap. 14 wines, 20.*

7. The L. Chancellor, Keeper of the Great *Stat. 34*  
 Seal, Treasurer, President, Privy Scale, and *H. 8.*  
 member of the Privy Counsell, the chief Justices, *Bankrupts*  
 or three of them at the least, whereof the Lord  
 Chancellor; Keeper, Treasurer, President or  
 Privy Seal to be one, upon complaint made in  
 writing, shall have Authority to take order  
 with the bodies, lands, and goods of Bancke-  
 rupts, for the payment of their debts. *Vide*  
*Stat. Anno 34 H. 8. cap. 4. Bankrupts.*

And thus much of the Absolute power of the Bancke-  
 lord Chancellor his Judiciall power; the *rupts.*  
 which poor barren Treatise I have not presu-  
 med to collect, either for instruction of hi

'Honor ( from whose wisdom I have alway  
thought nothing can be hidden ) or for offe  
ration of my reading and experience, ( wh  
do freely acknowledg my selfe the most igno  
rant man of my profession ) but to this end, an  
with this intention have I done it, partly to pro  
voke some good matter from those learne  
Lawyers, and skilfull Antiquaries that are  
Attendants upon his Lordship, and especiall  
for satisfaction to his desire that did deman  
it, and may command me.

*Sic litabant Mola qui non habebant Tinea.*



F I N I S.





## AN ANALYSIS.

IN the Office of the Chancellor of *Eng-  
land* are six things to be considered.

I. HIS ANTIQUITY in Office  
and not in name, which hath been from the  
time of the first Creation of Kings, and Ru-  
lers, And he was called

AMONG the *Hebrewes*, *Marceve*.

AMONG the *Grecians*, *Nomophilax*.

AMONG the *Romans*, *Prator*.

In OFFICE and name, which hath bin from  
the time of *Charls* the Great King of *France*.

IN OFF CE and name in *England*, which  
hath bin from about the time of King *Edward*  
the Confessor.

II. The ETYMOLOGY of his name.

Either à *Cancellando Iniqua Concessa Regis*,  
*viz.* by cancelling or disallowing the unjust  
Grants of the King, by withholding them from  
the Seale, untill the King may be better in-  
formed, according to the verse, (*Et man-  
data pii principis equa sunt.*

*Iniquas leges*, *viz.* by cancelling the rigor  
of extreme laws, in tempering them with  
Conscience, according to the verse.

## *An Analysis.*

*Hic est qui leges Regni cancellat iniquas*

**RECORDS, viz.** Of Cancellling such Records as ought to be made void, which may be either by drawing of crosse lines over such Records, and by entring of a (*vacat*) in the Margent, declaring the cause of the Cancellling; Which may also be either by Judgment given in the Court, for admitting such Record, or else by personall agreement of such parties or parties, as it only concerneth. Or by plucking the Records from the Filé. And this ought not to be done but by authority of Act of Parliament.

Or à *cancellis*, for that he sitteth in Judgment within certain limits or bounds. &c.

III. His constitution, which hath bin, and may be in two sorts, viz. By Letters Patents, which hath been but rarely used, and I find only three of them, of Record.

*Walter Grey*, Bishop of *Chester*, and Chancellor, by Patent dated *Anno 7. Regis Johannis*.

*Ralph Nevill*, Bishop of *Chichester*, and Chancellor by severall Patents, one bearing date *Anno 11 H. 3.* the other *Anno 17. ejusd. Regis*.

One other in the time of *H. 6.*

**BY DELIVERY** of the Great Seal unto his hand and custody, which delivery is to be entred of Record, wherein is to be noted, that the Keeper of the Great Seal had the Seal delivered in diverse manners.

It was delivered to the Chancellor by the King, and immediately he took an Oath for the faithfull exercising of the Office of Chancellor, and then he sealed Writs therewith a-  
lope.

## *An Analysis.*

It was delivered to the Keeper of the Great Seal without any Oath, and therefore he did not commonly Seal therewith, but in presence of some of the Masters of the Chancery.

III. HIS Preheminences: viz.  
Unto him are substituted all the Chancellors in England, Ireland, Wales and Scotland, and all they that have charge of any the Kings Seales wheresoever, beside the Lord Privy seal, by prescription.

The punishment of (*Scandala magnatum*) to be inflicted upon them that misreport of him by the Statutes of W. 1. cap. 33. and of Anno R. 2. ca. 5.

He may weare in his apparel, Velvet, Satten, and other Silks of any colour, except Purpure, and any manner of Furs, except black Genets, of what estate or degree soever he be by the Stat. of 24. of H. the 8.

He must follow the Court, and at all times be neer the King, by the Statute called *Articuli super Chartas*, Anno 28. E. 1. cap. 5.

He may have three Chaplaines qualified, whereof every one may purchase dispensation to have two Benefices, by the Statute de 21. H. 8. cap. 13.

To slay him it is Treason, declared by the Statute of 20 of Edw. the 3d. cap. 11.

If he be a Baron, or above, he shall sit in the Parliament, on the left side of the Chamber, on the higher part of the form on the same side, above all Dukes, except such as are Sonne, Uncle, Brother, Nephew, or Brothers or Sisters Sonne to the King, and also above all Officers, except the Vice-gerent. And if he be

## **An Analysis.**

be no Baron, he shall sit at the uppermost part of the Sacks in the midst of the Chamber, and in such degree he shall sit in the Star-chamber and in all other Assemblies, and Conferences of Counsell, by the Statute Anno 31 H. 8. cap. 10.

He is a Conservor and Iustice of the peace throughout *England*, by prescription.

He is the only Visitor of all Hospitalls, and Free-Chappels, which be of the foundation of the King, or his Progenitors, by prescription.

He is Prolocutor in the higher house of Parliament, by prescription, &c.

V. Places of his Judiciall Session, viz.

**CHANCERY**, where he is the only Judge assisted by the Master of the Rols, and the Masters of the Chancery, and heareth and determineth causes of Law and Conscience, as Chancellor.

**COUNSELL** chamber, where he is associated with others of the Privy Counsell, and heareth and determineth causes of Estate, as a Privy Counsellor.

**STARRE** Chamber, where he is associated with the Lord Treasurer, President of the Counsell, and Privie Seale, and associated with one Bishop, one Temporall Lord of the counsell, and two Iustices, and heareth and determineth, perjuries, causes penall, and of Common peace, by the Statutes of Anno 3 H. 7. cap. 1. and 21 H. 8. cap. 20. as a speciall Judge.

**ESCHEQUER** chamber, where he is associated with the Treasurer, and associated by the Iustices, and other Sage persons, and examineth

## *An Analyſis.*

mineth, and reverſeth or affirmeth judgments given in that Court by the Statute of 31 E. 3. cap. 12. as a ſpecial Judge.

VI. HIS Authority and power, which is of two ſorts, viz. As a Judge, and that is either ORDINARY as in theſe.

*Scire fac;* or execution upon a Statute Merchant, taking acknowledgement of Recognizances.

*Scire fac.* or execution upon a Recognizance knowledged in the Chancery.

*Scire fac.* to repeale Patents which are void or faulty.

*Monſtrance de droit, Petition de droit.*

Traverse of Offices, and Inquiſitions;

Pleas and Enterpleas, upon aſſignment of Dower.

Pleas and Enterpleas upon livery, and *ouſter le maine.*

Pleas and Enterpleas upon partition.

Attachments upon contempts, in not executing of Writs and Proceſs by Officers, or upon ſignification of untrue or inſufficient cauſes thereof, writs *de Corodio*, or *Pencor habendo*, unto Abbots, Priors and Biſhops.

*Audita querela*, ſued upon ſutes in the Chancery.

Prohibition to ſtay proceedings in the Court Chriſtian, or Admiralty, and conſultation to be granted thereupon.

Originalls, or Bills by perſons priviledged in the Chancery.

Originals, or Bills againſt perſons priviledged there.

Writs of Privilege, ſued by perſons priviledged

*An Analysis.*

ged, to remove sures in other Courts into the Chancery.

AND DIVERS other of like sort.

ABSOLUTE, and by this power he ordereth and decreeth matters of Conscience, and the pleadings are in *English*; whereas in his ordinary power, he holdeth plea of matters according to the form of Common Law, and the pleadings are in *Latine*.

AS a MINISTER, GRANTING of pardons of Common Grace.

GRANTING and sealing of Commissions, OF patents and preservations, &c.

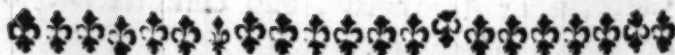
MAKING of Originall Writs of Proccesse, upon the Statute Staple, &c.

CONSTITUTING of certaine Officers belonging to his Office.

GIVING of Oathes to Officers, And such like.



FINIS.



FH

MVSEVM  
BRITANNICVM

